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SUPREME COURT OF THE UNITED STATES.

No. 257.

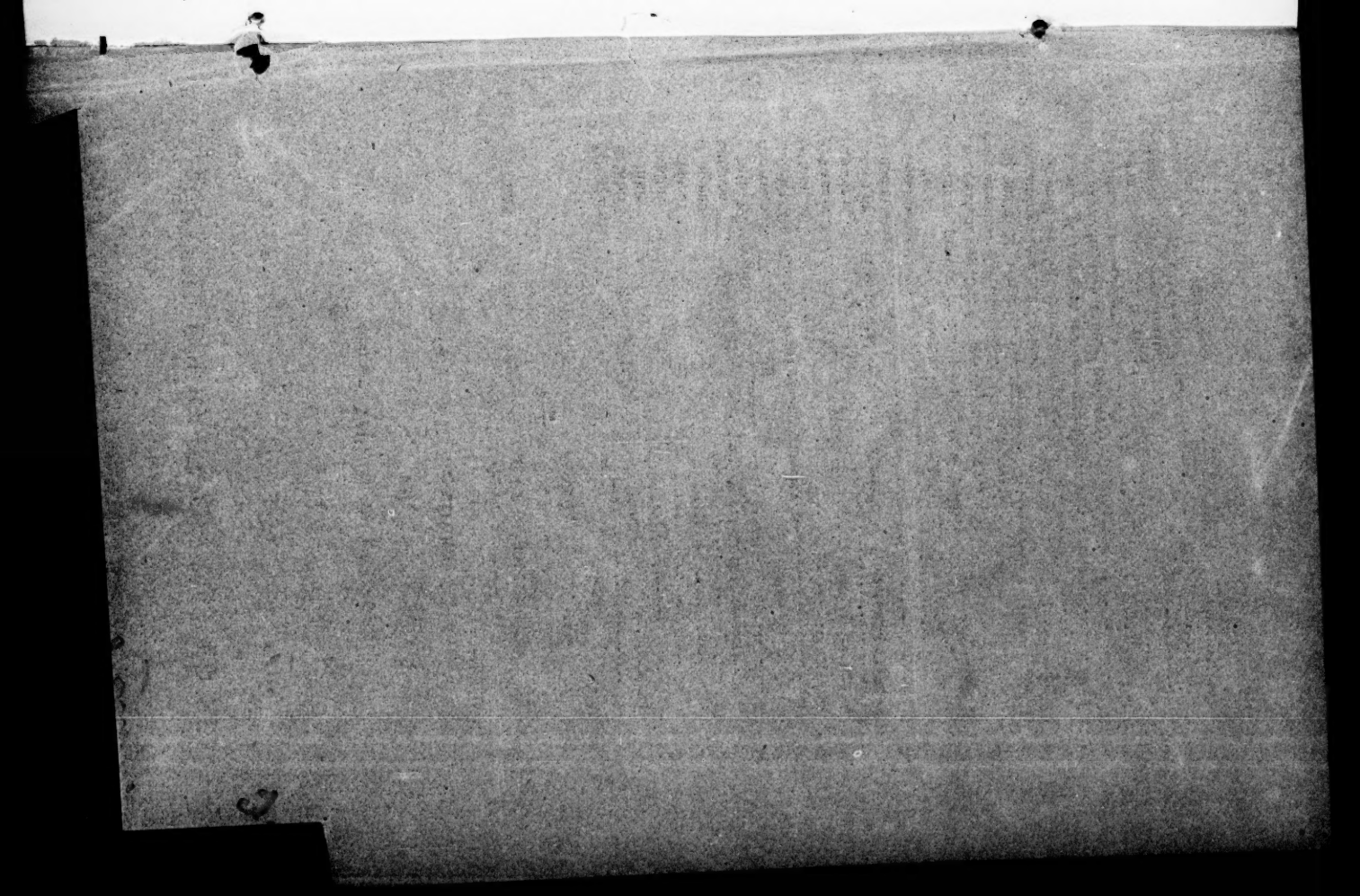
MARK YOUNG, APPELLANT,

vs.

POWELL M. BRADLEY ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 9, 1877.



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1 *Original bill.—Filed April* 12, 1873.

To the supreme court of the District of Columbia, in equity:

Powell M. Bradley, Frederick W. Bradley, and Maria G. Bradley, of the District of Columbia, infants, and suing by Richard B. L. Macrae, their guardian and next friend, bring this their bill of complaint against Mark Young, A. Thomas Bradley, Frederick W. Jones, Henry H. Dodge, Walter S. Cox, & Christopher C. Wolcott, & Elizabeth W. Wolcott, his wife, of the same place.

And therefore your orators complain and say:

1. That William A. Bradley, late of said District, &c., parted this life in August, 1867, leaving him surviving Sidney T. Bradley, his widow, and the following children, that is to say, William A. Bradley, junior, Sidney T. Edelin, intermarried with Alfred Edelin, and Jeannette H. Linton.

2. That said William A. Bradley left a last will and testament dated the 7th of August, 1866, and *only* admitted to probate in this District on the 3d of September, 1867, whereby he devised all his estate,
2 real, personal, and mixed, to his son, William A. Bradley, junior, and A. Thomas Bradley, their heirs, executors, and administrators, and the survivor of them, and the heirs, executors, and administrators of such survivor, upon the following trusts, that is to say:

To set aside the house in which the testator resided, together with all the household effects, to his widow for and during her *her* natural life, and out of the nett income of his estate to pay her one-third thereof for and during her life.

To divide all of said estate, immediately after the death of the testator, into four equal parts, and to allot one of said parts to his son, William A. Bradley, junior, another to the children of said son born and to be born, another to his daughter, Jeannette H. Linton, and another to his d'ughter, Sidney T. Edelin, whose portion was to embrace the property known as "the Corning property," situated in the State of New York.

That if either of said daughters should die without issue her
3 share should go to the said children of his son, except that in event of Sidney T. Edelin dying without issue and leaving her husband surviving, "the Corning property" should be conveyed to him in fee simple.

The part devised by the testator to his widow for life to be charged to the shares of the two daughters, charging said shares five thousand dollars each, and upon the death of the widow the house to be added to the shares of said daughters.

The household effects, after the death of the widow, to be divided as the rest of the property.

Before the division of the estate into four parts, the son, William A. Bradley, to have and receive his part immediately, free from all trusts contained in the will.

The trustees and the survivor to hold the parts or shares of the daughters in trust for their sole and separate use, and as if they were femes sole and free from the control of any husband, present or
4 future, for and during the respective natural lives of said daughters, and, if either of them should die leaving issue, such issue to have the mother's share, and the same to be held in trust by the trustee and the survivor until the youngest of such issue should attain the age of twenty years, or until, in the discretion of the trustees or the

survivor, it should appear best to terminate the trust; and in the absence of issue on the part of either or both said daughters, the share or shares to go to said children of said son.

The trustees and the survivor are invested with the largest power and discretion in the management of the estate, and are authorized to hold and control the trust property according to his or their best judgment, and to sell and dispose of the same subject only to the trusts of the will, and to have all the rights, powers, and advantages of the testator in respect of all contracts and agreements relating to the estate.

5 The trustees and the survivor are appointed executors of the will, and your orators file herewith a copy of said will, P. M. B. Exhibit No. 1, and pray the same may be taken as part hereof.

3. Your orators show that they are the children of William A. Bradley, junior, mentioned in said will, and were all living at the date thereof; that no division of the estate of the testator into four parts, as directed by said will, was ever made, nor was there any allotment of the several shares to the beneficiaries entitled thereto, but that the provisions of said will in respect of such division and allotment were totally unexecuted, and the estate remained undivided and in common; that after the death of the testator his widow continued in the use and possession of his residence until her death in the fall of 1868; that the "Corning property" was by the testator conveyed in his lifetime to Alfred Edelin in fee; that William A. Bradley, junior, the father of your ora-

6 tors, died in March, 1869, leaving his cotrustee, A. Thomas Bradley, surviving; that the said William A. Bradley, junior, left a last will and testament dated the 10th of June, 1868, and admitted to probate in this District on the 1st of May, 1869, whereby he devised all his estate to his widow for life, but upon condition that said devise should cease after her intermarriage, and in that event she should take the interest in said estate which she would have taken had he died intestate, and subject to said devise he devised all his estate to his children living at the death or intermarriage of his widow; and your orators file herewith a copy of said will, marked P. M. B. Exhibit No. 2, and pray the same may be taken as part hereof.

That said Elizabeth W. Bradley, the mother of your orators, on or about the day of February, 1872, intermarried with Christopher C. Wolcott; that Sidney T. Edelin died without issue in the spring

7 of 1870; that Jeannette H. Linton also died without issue in the month of January, 1871, and that your orators, by reason of the said will of their father and the intermarriage of their mother, and the deaths without issue of their aunts as aforesaid, became and are entitled to three-fourths of the estate of their grandfather, the said William A. Bradley, in addition to the one fourth devised to them directly by his will aforesaid, and are, moreover, the heirs-at-law of their said grandfather and their father and aunts.

Your orators are advised and charge under the true construction of the said will of William A. Bradley, the division of the estate directed to be made was to take place immediately after his death, and the part or share of their father was to be received by him immediately after such division, and was to be free from any and all trusts contained in said will, and that the part or share of your orators was likewise

8 to be received immediately and was to be free from said trusts, and that the powers of the trustees had reference solely to the trust estates devised by said will to said daughters of the testator and their issue, and that, after the determination of said trust estates, said powers became extinguished and that any sale or disposition of any

part of said trust estates made during the continuance thereof was to be subject to the trusts of said will.

5. And your orators shew that said William A. Bradley died seized and possessed of real estate in this District of large value, and among it of a certain mill or tenement situate in Georgetown and fronting on the south bank of the Chesapeake and Ohio Canal about thirty-five feet, and running back to Water street and having a front on said street of about fifty-two feet, which mill property was at his death leased to said Mark Young, at an annual rent of two thousand dollars,
9 payable quarter-yearly in advance, which lease expired in July, 1868; that after the expiration of said lease, the said trustee made a new lease of said property to said Mark Young for the term of three years from the 11th of July, 1868, at the annual rent of fifteen hundred dollars, payable quarter-yearly, and with the privilege of renewal for two years more on giving notice in writing of the claim of said privilege at least thirty days before the expiration of said term of three years.

That said William A. Bradley was at his death also seized and possessed of certain property adjoining said mill property on the west and fronting the south bank of said canal, about seventy-five feet, and running back of about the same width to said Water street, and also of certain wharf property situate on the south side of said Water street, and south of the foregoing pieces of property and between said street and the channel of the Potomac River, and having a river front of from one hundred & thirty to one hundred and forty feet and a front
10 on Water street of from one hundred and twenty-five to one hundred and thirty feet all which property was at his death under lease to the Cumberland Coal and Iron Company for the term of five years from the 1st of March, 1864, and at an annual rent of twelve hundred dollars; that said lease was on or about the 1st of March, 1869, upon the expiration thereof renewed by said trustees for the further term of five years; and that the said Cumberland Coal and Iron Company subsequently assigned all its interest in said lease to the Consolidation Coal Company, which is now the tenant of said property.

6. That the said property, whereof the Consolidation Coal Company is tenant, has been since about the time of the original lease thereof, in 1864, and still continues to be used for the transhipment of coal from canal boats laden therewith to said wharf property or to vessels in the Potomac River by means of railways supported by trestle-work
11 and extending from the canal bank over the property adjoining said mill property on the west, and over said Water street to said wharf property and the river, and that the adaptability of said wharf property to said business in consequence of its connexion with the canal by means of the property adjoining said mill property on the west constitutes its main element of value, the coal transhipped by said Consolidation Coal Company during the year 1872 exceeding three hundred thousand tons.

7. That in June, 1871, the said A. Thomas Bradley, professing to set as surviving trustee under said will of William A. Bradley, sold and conveyed or pretended to sell and convey to the said Mark Young as well the said mill property as the property adjoining the same on the west and also the water-lease from the Chesapeake and Ohio Canal Company for one hundred and fifty inches of water, attached to said mill, and also the privilege of using said wharf property for the purpose of keeping
12 in repair the tail-race from said mill, for thirteen thousand nine hundred dollars, payable one-third in cash and the balance at one

and two years; and your orators file herewith a copy of said conveyance marked P. M. B. Exhibit No. 3, and pray the same may be taken as part hereof, and they aver and charge that said sale and conveyance are null and void, because no power of sale was by said will given to the trustees or the survivor in respect of the part or share devised to the father of your orators or in respect of the part or share devised to your orators, but the only power of sale given by said will had relation exclusively to the trust estates thereby created and became extinguished before the determination of said trust-estates, and even during their continuance could not be exercised until the property embraced
13 in said estates had been separated from the rest and allotted in the manner directed by said will.

That moreover the consideration of said sale and conveyance was grossly inadequate and known by said Mark Young to be such, the value of the property embraced in sale said being not less than twenty-five thousand dollars; that said sale and conveyance if upheld will almost destroy the value of said wharf property by cutting off its connxtion with the coal trade of said canal, the only purpose for which it is available, and that the value of said wharf property with its connexion with the canal by means of the property adjoining said mill property on the west is not less than thirty-five thousand dollars, and without said connexion does not exceed five thousand dollars if indeed even that amount; that said Mark Young well knew that said A. Thomas Bradley was acting in
14 a judiciary capacity and fraudulently imposed upon him and took advantage of his ignorance of the value and dimensions of the property sold and conveyed as aforesaid, and well knew that said sale and conveyance were to the prejudice and wrong of your orators, the beneficiaries whom said Bradley professed to represent; and that said Bradley, either through the fraudulent practices of said Young or through mistake and ignorance of the value and dimensions of the property, believed he was selling and conveying only the mill property, whereof said Young was tenant, and did not discover his mistake until after the delivery of said conveyance, and would not have executed and delivered said conveyance if aware that the property embraced therein extended beyond said mill property.

8. That since said pretended sale and conveyance the said
15 Mark Young has refused to pay rent for said mill property and has disclaimed to hold the same as tenant, but has claimed and now claims title thereto by reason of said pretended sale and conveyance and has demanded rent from said Consolidation Coal Company for said property adjoining the mill property on the west, and has served a notice on said company to quit before the expiration of its term.

9. That on or about the 16th of June, 1871, the said Mark Young obtained from Robert Ould the outstanding legal title under two deeds of trust which had been given by the said William A. Bradley upon the premises pretended to be sold and conveyed as aforesaid, which conveyance from said Ould was on the 17th of June, 1871, recorded among the land records of this district.

10. That said Mark Young by deed dated the 10th of June, 1871, conveyed or pretended to convey to Frederick W. Jones the said
16 premises in trust to secure two promissory notes of even date with said deed and payable to the order of said A. Thomas Bradley at one and two years after date, and each for the sum of $4,633.33, the said notes being given for the unpaid purchase money under said pretended sale, which deed was on the 12th of June, 1871, recorded in the land records of this district.

11. That said Mark Young being indebted unto Henry H. Dodge in the sum of $1,250 for which he had delivered to said Dodge three promissory notes payable at one, two, and three years after date, and dated the 1st of July, 1871, executed and delivered on said day for the purpose of securing said notes a further deed of trust on said premises to Walter S. Cox, which deed was recorded on the 13th of July, 1871, in the said land records.

12. That said Mark Young before said pretended sale and conveyance well knew the contents of said will of William A. Bradley, and that the only color of authority of the said A. Thomas Bradley to make said sale and conveyance was as surviving trustee under said will.

13. That said William Bradley, junior, and A. Thomas Bradley accepted the offices of trustees and executors under said will and took possession of the estate of their testator, but that the business of said officers was attended to and managed almost exclusively by the latter, who after the determination of said trust estates continued in the possession and management of the said estate until on or about the 14th day of December last, when the said Richard B. L. Macrae was appointed by this court guardian of your orators in pursuance of the will of their father.

14. Your orators are of the ages of thirteen, nine, and six years, respectively. The dower of their mother in the real estate of their father, including his interest in the said premises conveyed to Mark Young, has never been assigned. And they shew that the said conveyances from said A. Thomas Bradley to said Mark Young and from the latter to Frederick W. Jones and Walter S. Cox are clouds upon their title to said premises and prevent and obstruct the use, employment, and disposition of the same for their benefit.

To the end that the said Mark Young, A. Thomas Bradley, Frederick W. Jones, Henry H. Dodge, Walter S. Cox, Christopher C. Wolcott, and Elizabeth W. Wolcott, may be made defendants to this bill, and may answer the same, and that the said conveyances from A. Thomas Bradley, Mark Young, and from the latter to Frederick W. Jones and Walter S. Cox may be set aside and decreed to be null and void, and that your orators may be decreed to be entitled to the possession of the premises in said conveyances mentioned, and that said Mark Young may be decreed to account for the rents and profits of said premises, and that your orators may have such other and further relief as may be just and their case may require.

May it please the court, the premises considered, to grant unto your orators subpœnas to be directed to the said defendants and commanding them to appear and answer, &c., as in duty, &c.

W. D. DAVIDGE,
REGINALD FENDALL,
Sol'rs for Compl'ts.

Exhibit No. 1 to bill.— Will of Wm. A. Bradley.

I, William A. Bradley, of the city of Washington, being of sound disposing mind, memory, and understanding, do make and publish this my last will and testament, hereby revoking all and every other will heretofore made by me.

Item first. After the payment of my just debts and funeral expenses by my executors hereinafter named, I give, devise, and bequeath all of my estate, real, personal, and mixed, of whatever kind it may be, and

wheresoever situated, to my son, William A. Bradley, jr., and my cousin, A. Thomas Bradley, their heirs, executors, and administrators, the survivor of them, his heirs, executors, and administrators, in trust, first, to set apart the house in which I now reside, on New York avenue, in the city of Washington, together with all and singular the household effects, including pictures, plate, books, and other chattels now therein,
21 or therein at the time of my death, to my dear wife, to be held exclusively by her during her natural life; and out of the nett income derived from my said estate of every sort to pay to her one equal third part annually, or quarter-yearly, as she may prefer, so long as she shall live.

Next, I direct my said trustees, and the survivor of them, to divide all of my said estate immediately after my death, including that which is real, personal, or mixed, into four equal parts, as near as in their or his judgment and valuation can be done, and if they cannot agree they shall select a competent disinterested third to aid them in such division and valuation, and the decision of any two of said three persons shall determine said division and valuation; & of these parts my said trustees, or said survivor, shall allot one part to my said son, William A.
22 Bradley, junior; one part to the children of my said son, now or hereafter born in lawful wedlock; one part to my daughter, Jeanette H. Linton; and one part to my daughter Sidney T. Edelin, whose portion shall embrace the property owned by me situated in Corning, Steuben County, in the State of New York, and known as and termed in my family the "Corning property;" and if either or both of my said daughters die without issue, either before or after my death, her or their said fourth parts shall go to the children of my said son now and hereafter born, share and share alike, subject as to Sidney's portion to the subsequent provisions in this will.

Next, upon the death of my said wife, I direct my said trustees, and the survivor of them, to add to the parts set apart to my said daughters the house specially set apart for my said wife for life, the same
23 being an equal charge upon their portions during her said life, and charging them on their said parts each five thousand dollars for their respective interest in said property; and they or their survivor of my said trustees shall also take into possession the said household effects and other chattels, and make, according to his or their judgments, an equal distribution of the same in kind as to the whole, or in part as to some, and in the proceeds of sales as to others, among the parties entitled to take real estate under this my will, and in the same proportions.

Next, if my said daughter Sidney T. dies before her present husband, and he survives me, and she leaves no issue, then I direct my said trustee, and the survivor of them, to convey to said Sidney T.'s husband, Dr. Alfred Edelin, in fee simple, that part of my estate known as aforesaid as the "Corning property."

24 Next, I direct my said trustees, and the survivor of them, to hold the portions my said daughters receive under this my will, in trust, to and for their respective, sole, and separate use, as if femes sole, and never married, free from the control of any present or future husbands they or either of them may ever have, and not to be in any manner subject to the control or liable for the debts of such husbands for and during their respective natural lives; and if either of them dies before or after me leaving issue, such issue shall have the mother's part, share and share alike, to be held in trust for them by my said trustees and the survivor of them, until the youngest of such issue shall attain

the age of twenty years, or in the discretion of my said trustees and the survivor it may appear best to terminate said trusts; and in the absence of issue of either or both of them, then to follow the dis-
25 positions hereinbefore provided in that event; but whether with or without issue of my said daughter Sidney T., nothing shall be herein understood to prejudice the conditional estate hereinbefore provided for her said husband.

Next, I direct that upon the division into four parts hereinbefore prescribed, my said son, William A. Bradley, junior, or his heirs, shall have and receive his portion immediately, except only his distributive share in the personal property left to my wife for her life, and free from any and all trusts whatever contained in this will.

Item second. I give and bestow upon my said trustees and the survivor of them the largest powers and discretion in taking charge of and managing my estate, and authorize them and the survivor to
26 have, hold, direct, and control the aforesaid trust property according to their or the survivor's best judgment, and to sell and dispose of the same, or any parts thereof, from time to time, subject only to the aforesaid trusts, and as freely as I myself could do if living; and also in all things to have the same powers, rights, privileges, benefits, advantages as I myself have, or might have if living, in all and any contracts, bargains, agreements, companies, or other compacts to which I am now or may become a party.

Item third. I nominate, constitute and appoint my said trustees, and the survivor of them, executors and executor of this my last will and testatment.

In witness whereof I have hereto set my hand and seal this seventh day of August, in the year eighteen hundred and sixty-six.

W. A. BRADLEY. [SEAL.]

27 Signed, sealed, published and declared by the testator to be his last will and testament in our presence, who at his request, and in his presence and in presence of each other, have hereunto set our names as witnesses.

SAM'L L. PHILLIPS.
BENJ. G. LOVEJOY.
JOS. H. BRADLEY, Jr.

[U. S. revenue stamps $43.50.]

28 Orphans' court.

DISTRICT OF COLUMBIA,
Washington County, to wit:

SEPTEMBER 3D, 1867.

This day appeared Sam'l L. Phillips, Benj. G. Lovejoy, and Joseph H. Bradley, jr., the subscribing witnesses to the foregoing last will and testament of William A. Bradley, late of Washington County aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named sign & seal this will; that he published, pronounced and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract, and that their

names as witnesses to the aforesaid will were signed in the presence and at the request of testator, and in the presence of each other.

Test:

JAS. R. BEIRNE,
Register of Wills.

29 DISTRICT OF COLUMBIA,
Washington County, to wit:

OFFICE OF REGISTER OF WILLS.

I hereby certify that the foregoing is a true copy of the original will of William A. Bradley, deceased, and the probate thereto, filed and recorded in the office of the register of wills for Washington County aforesaid; and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probate, was by order of the supreme court of the District of Columbia duly admitted to probate and record on the 3d day of September, A. D. 1867.

Witness my hand and the seal of the supreme court of the District of Columbia this 11th day of February, 1873.

{ SEAL SUPREME COURT D. C. }

A. WEBSTER,
Register of Wills.

30 *Exhibit to bill No. 2.—Will of W. A. Bradley, jr.*

Copy of the last will and testament of William A. Bradley, filed and recorded in the office of the register of wills, May 1st, 1869.

I, William A. Bradley, of the city of Washington, in the District of Columbia, being in good health of body and of sound and disposing mind, memory and understanding, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs and thereby be the better prepared to leave this world when it shall please God to call me hence, do therefore make and publish this my last will and testament in manner and form following; that is to say:

I give, devise, and bequeath all my estate, real, personal, and mixed, and wherever the same or any part thereof may be, unto my beloved wife Elizabeto W. Bradley, for her life, if she shall so long con-
31 tinue a widow, as well to manifest my affection for and my confidence in her as because I believe it will be best alike for her and for our children that she shall during her lifetime and widowhood have the sole right to control and manage my said estate, and to receive and apply the entire net annual rents, issues and profits thereof to the comfortable support of herself and said children, not doubting for a moment that with true motherly affection she will carefully provide for the comfort, suitable education, and proper support of said children, and each of them; but if after my decease she shall marry again, then at and upon her said second marriage, and subject to such right of dower in my real estate and to such legal interest in my personal property as under the now existing laws of the District of Columbia she would be entitled to claim if I died intestate, I give, devise and bequeath all of my
32 estate, real, personal, and mixed, wherever the same or any part thereof may be, unto such of our said children as may survive me and be living at the time of their mother's said second marriage, and to their respective heirs in equal proportions or shares; and upon the happening of her said second marriage should it occur, or at or upon the decease of my said wife, I hereby constitute and appoint my friend R. B. Lee

Macrae guardian for my said children, or for such of them as may then be minors, and therefore proper to be placed under guardianship, and especially request him to accept said trust immediately after the marriage or decease of my said wife.

And, lastly, I do hereby constitu'e and appoint my said wife Elizabeth W. Bradley sole executor of this my last will and testament, revoking and annulling all former wills by me at any time heretofore made; ratifying this and none other to be my last will and testament.

In testimony whereof I have hereunto set my hand and affixed my seal this tenth day of June, in the year of our Lord eighteen hundred and sixty-eight.

Admitted to probate May 1st, A. D. 1869.

33 *A. Thomas Bradley, trustee & ex'r, to Mark Young. Deed. Recorded June 12th*, 1871, 1 *p. m., liber* 643, *folio* 477.

[Stamp $14.00.]

This indenture, made this tenth day of June, in the year of our Lord eighteen hundred and seventy-one, by and between A. Thomas Bradley, as surviving trustee and executor of and under the last will and testament of the late William A. Bradley, deceased, of the first part, and Mark Young of the second part, all of the county of Washington, District of Columbia, witnesseth:

That the said A. Thomas Bradley, trustee and executor as aforesaid, in consideration of the sum of thirteen thousand nine hundred dollars to him in hand paid by the said Mark Young at the ensealing and before the delivery of these presents (the receipt whereof is hereby acknowledged), hath, under the powers conferred upon him in and by said last will and testament, granted, bargained, and sold, aliened, enfeoffed, released, conveyed and confirmed, and doth by these presents grant,
34 bargain, and sell, alien, enfeoff, release, convey, and confirm, unto the said Mark Young, his heirs and assigns forever, all that certain parcel of ground and premises lying and situate in Georgetown, and known upon the plats and plan of said Georgetown, in said District of Columbia, as and being all those parts of lots numbered two (2) and three (3) in Peter, Beatty, Deakins, and Threld's addition to said town which lie south of the Chesapeake and Ohio Canal and north of Water street, the said property being together in one parcel and fronting on Water street one hundred and twenty-six (126) feet and eight (8) inches and nearly the same on the Chesapeake and Ohio Canal, together with the water privilege and lease for 150 inches of water from the canal company, and also the right and privilege to the said Mark Young, his heirs and assigns, ow'ing the above property, to enter upon and pass and repass from time to time over and upon the ground and premises south of the parcel above conveyed for the purpose only of keeping
35 open and in repair the tail-race from the mill upon the property hereinbefore conveyed but for no other purpose whatever, with the buildings, hereditaments, rights, privileges, tenements, ways, waters, and appurtenances to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, and interest, both legal and equitable, therein and thereto of which the late William A. Bradley died seized and possessed or entitled be seized and possessed:

To have and to hold the said ground and premises, with the privileges and appurtenances to the same belonging or in anywise appertaining, a s

hereinbefore described, unto the said Mark Young, his heirs and assigns, forever, to his and their only proper use, benefit and behoof forever.

And the said A. Thomas Bradley, for himself and his heirs and the heirs of the said late William A. Bradley, doth hereby covenant, promise, and agree to and with the said Mark Young, his heirs and
36 assigns, the said described ground and premises to warrant and forever defend unto the said Mark Young, his heirs and assigns, from and against the lawful claims and demands of all persons claiming or who may claim the same by, under, or through the said William A. Bradley or his heirs, or either or any of them.

And, further, that at the request and cost of the said Mark Young, his heirs or assigns, he, the said A. Thomas Bradley and the heirs of William A. Bradley, shall and will at any and all times hereafter make and execute and deliver all and every such other and further deeds or assurances in law the better and more effectually to convey and assure unto the said Mark Young, his heirs and assigns, to said granted premises which in the opinion of the person requesting the same may be deemed necessary to effect that end.

In testimony of all which the said A. Thomas Bradley hath
37 hereunto set hand and seal the day and year first hereinbefore written.

A. THOMAS BRADLEY, [SEAL.]
Surviving Trustee of the Last Will & Testament of Wm. A. Bradley, dec'd.

Signed, sealed, and delivered in the presence of—
CHARLES WALTER.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Charles Walter, a notary public in and for the said county and district, do hereby certify that A. Thomas Bradley, party to a certain deed bearing date on the day of June, A. D. 1871, and hereto annexed, personally appeared before me in my county aforesaid, the said A. Thomas Bradley being personally well known to me to be the person named in and who executed the said deed, and then and there the said A. Thomas Bradley acknowledged the same to be his act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal this 10th day of June, A. D. 1871.

[SEAL.] CHARLES WALTER,
Notary Public.

38 In the supreme court of the District of Columbia, April 12th, 1873.

POWELL M. BRADLEY ET AL., COMPLAINANT,
against
MARK YOUNG ET AL., DEFENDANT. } No. 3153. Eq. doc. 12.

The President of the United States to Mark Young & Henry H. Dodge, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer

the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

MEMORANDUM.—That the defendant' are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

39 Summoned both.

A. SHARP, *Marshal.*

APRIL 14TH, 1873.

40 In the supreme court of the District of Columbia, April 12, 1873.

POWELL M. BRADLEY ET AL., COMPLAINANTS,
against
MARK YOUNG ET AL., DEFENDANTS. } No. 3153. Eq. doc. 12.

To the President of the United States to A. Thomas Bradley, Frederick W. Jones, Walter S. Cox, Christopher C. Walcott, & Elizabeth W. Walcott, his wife, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

41 *Separate answer of Mark Young.*

In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL.
vs.
MARK YOUNG ET AL. } In equity, 3153. Docket 12.

1. I believe, and therefore admit as true, the allegations of the first paragraph of said bill of complaint.

2. I admit that said William A. Bradley left a last will and testament, bearing the date and probated as alleged in the second paragraph of said bill of complaint. I do not admit, but deny, that the provisions of said will are correctly set forth in said second paragraph, and say that the copy filed as an exhibit with said bill as Exhibit No. 1 truly contains said provisions.

3. I neither admit nor deny, but insist upon strict proof of, the alle-

gations of the 3d paragraph of said bill of complaint that the
42 complainants are the children of William A. Bradley, junior, and were living at the date of said will; that no division of the estate was made, nor any allotment of the several shares; that the provisions of said will in this respect remained unexecuted; that the widow died in the fall of 1868; that the "Corning" property was conveyed to Alfred Edelin in the lifetime of the testator; that William A. Bradley, junior, died in March, 1869; that he left a last will and testament, with the provisions alleged, and that no copy of such will, although alleged to be filed as an exhibit with said bill of complaint, has in fact been filed and exhibited; that plaintiff's mother intermarried as alleged; that Sidney S. Edelin died as alleged; Jeanette H. Linton died as alleged; that the complainants thereby became entitled to my estate, as alleged; or that they are the heirs-at-law of their grandfather, father, and aunts, as alleged; and shall require the same to be strictly proven by competent evidence.

43 4. I deny the allegations of the fourth paragraph of the bill of complaint, as I am advised these are matters of law and are not the true construction of said will.

5. I deny the allegations of the fifth paragraph of said bill of complaint so far as the same pretend to give the dimensions of the mill or tenement, or the adjacent property. I admit that in 1866 I was occupying a mill at an annual rent of two thousand dollars, which was an exorbitant rent for the same; that after July 11th, 1868, I continued to occupy the same at the annual rent of fifteen hundred dollars, under a lease which would and did expire with the 10th of July, 1871; that the property was in such a state of dilapidation and bad repair, I should have continued such occupancy no longer than to the 11th of July, 1871, and had given notice to that effect to the person to whom I had up to that time regularly paid said annual rent. I deny all
44 the other allegations contained in said fifth paragraph of said bill of complaint, and say, moreover, that the pretended description given in said bill of complaint of property affords no opportunity of identifying the same; that "said canal," as it is called in said bill, runs from west to east across the corporate limits of what was formerly the city of Georgetown, and "Water street," so called in said bill, runs to the same extent and nearly the same direction, and that said extent is nearly one mile, and that "Potomac River," so called, is equal in extent and nearly parallel with Water street; and that on said canal, and within said limits, there are numerous mills and tenements and places used for the transhipment of coal, and said bill of complaint does not set forth what particular property it intends to refer to.

6. I believe it to be true, and therefore admit, as alleged in the sixth paragraph, that certain property between the canal and the
45 Potomac River, and on both sides of Water street, has been used as a place for the transhipment of coal from the canal to the river by means of railways supported on trestle-work and extending from the canal over Water street to the river.

I deny, however, that the adaptability of such property for such business constitutes its main element of value, and say that in my opinion all property along the canal, as well as river, would be of greater value were the coal transhipment business entirely destroyed, and the property devoted and applied to milling and manufacturing purposes; and I say further that "Water street" is a public highway, dedicated to the public for so long a period that the memory of man runneth not to the contrary, and that having a right to the free and unobstructed use and

enjoyment of said highway, I intended taking the requisite measures to restrain and enjoin the obstruction of said street by any coal company or person engaged in the transhipment of coal, with such railways and trestle-work, and that it has been only by the sufferance of this defendant and other persons having the right to the use of said street that the business of transhipment of coal in the manner now pursued has been permitted or tolerated, and that upon proper application of any person interested, the obstruction of Water street by railways and trestle-works (without which the business of transhipment of coal must necessarily be suspended in Georgetown) would be forever prohibited; and so for this and other reasons I again deny that it is a main element of value of any property in Georgetown that it is adapted for the transhipment of coal from the canal to the Potomac River, crossing Water street by railways and trestle-work.

46

7. I admit that in June, 1871, A. Thomas Bradley conveyed to me certain property described in the deed thereof of which I admit the Exhibit No. 3 filed with said bill of complaint is a true copy; I admit that I agreed to pay him the sum of thirteen thousand nine hundred dollars ($13,900) for said property, one third in cash and the residue at one and two years; and I say that I paid said A. Thomas Bradley the said one-third (or $4,633$\frac{33}{100}$) in cash upon the delivery of said deed to me, and on or about the 10th day of June last, or one year after the date of said deed, I paid another one third, with the interest thereon for one year, making in all the sum of $4,913.64 (four thousand nine hundred and thirteen $\frac{64}{100}$ dollars), and also one year's interest upon the other third, or $277, and that I am ready and willing and hereby tender the remaining third of said purchase-money with one year's accumulated interest thereon, making in all the sum of $4,913.64 (four thousand nine hundred and thirteen $\frac{64}{100}$ dollars), so as that the whole of said purchase-money shall be paid in full as stipulated.

47

Answering further the allegations of the seventh paragraph of said bill of complaint, I say that although in said deed it appears that there is attempted to be conveyed "the water privilege and lease for 150 inches of water from the canal company," that in point of fact the said William A. Bradley never had or owned or had any license or lease of said water from the canal company, and this grant passed nothing to this defendant that had ever belonged to the said William A. Bradley.

48

I utterly deny that the consideration of such sale and conveyance was grossly inadequate, and say that it was a full and fair price for the same, and more than anybody else would have given, and I say that I gave more, because I had been the occupant of the place for several years, had created a good-will, and wished to avoid the trouble expense of delay of changing my place of business. I deny that its value was twenty-five thousand dollars, and also that said sale if upheld will almost destroy the value of said wharf property by severing its connexion with the canal, and say that any person who insists upon Water street being unobstructed will cause the same severance; that said wharf property is now severed from said canal property by a public highway seventy (70) feet in width, and the allegations of values set forth in this paragraph are all fanciful and speculative.

49

I utterly deny that I fraudulently or in any manner imposed upon A. Thomas Bradley, or took advantage of any ignorance of his in any way or manner.

The proposition for the sale and conveyance enacted from him, and not from me. I had notified him that I should leave the place when my

time was out (July 11th, 1871); that I would not pay the rent, which was high, and the property was in bad repair and excessively dilapidated.

He then proposed to me to buy it from him; that if I left he
50 might not be able to rent it, and it would lie idle, unproductive, and be a source of constant expense, and become more & more dilapidated.

He made a proposal to me in writing, the original whereof I will produce at the hearing, and a copy whereof I herewith file, marked Exhibit M. Y., No. 1, whereby he offered to sell me the property at the price named therein, giving the dimensions of the property he proposed to sell (and which are those mentioned and given in said conveyance to me), which proposal I accepted, and the allegation of fraudulent practices on my part in the transaction are utterly and wholly false; and I deny that said A. Thomas Bradley was misled as to the dimensions of the property, or discovered any mistake whatever, or that he would have refused to deliver said deed if aware that it conveyed more than the mill then occupied by me. And again I refer to said exhibit, which bears date June 2d, 1871, while the deed bears date 8 days after, or June
51 10, 1871, and say also that nearly one-half of said mill is in a public street or highway of Georgetown, and that the mill alone would not be worth over five thousand dollars, and that if the coal business continues to be carried on around it, it will not be worth that amount as a mill. And I say further that after I had accepted the proposal to sell all the property lying north of Water street, as aforesaid, but before the deed had been made, the said A. Thomas Bradley desired me verbally to purchase also the wharf property, saying, in substance and effect, "Now that you have bought all on one side of the street, you had better buy the wharf." I utterly deny all allegations contained in the seventh paragraph of said bill of complaint not hereinbefore admitted or denied.

8. Answering the allegations of the eighth paragraph of said bill of complaint, I admit that since said conveyance I have not paid any
52 rent, and that I claimed title to the property conveyed by said deed. I also admit that I have demanded rent from the occupants of some of the property, and notified them to quit upon the expiration of their term. I say further that after said deed to me from the said A. Thomas Bradley, he paid me an aliquot part of the rent which he collected from the occupants of the said wharf property, who also occupied part of the property conveyed to me, as it was proper for him to do, and to which I agreed, because it was more convenient for him to collect the whole rent from the tenant in bulk and pay me my proportionate part of it.

9. I admit the allegations of the ninth paragraph of said bill, and say that this release was obtained with much trouble, cost, and expense, but was necessary, as I thought, to discharge the property from the trusts created by the said William A. Bradley in his lifetime, and I aver
53 that by said deed the legal title to said property passed to and became vested in me, and I file same as exhibit marked "M. Y. 2," ask that it be taken as a part of this my answer.

10. I admit the allegations contained in the tenth paragraph of said bill of complaint, and say that said deed of trust was given to secure the deferred purchase-money (the consideration of the before mentioned conveyance to me) to said A. Thomas Bradley for the very property in question.

11. I admit the allegations contained in the eleventh paragraph of said bill, and say that the said debt in said deed secured was contracted

and incurred for the purchase of fifty (50) inches of water to be used in the propulsion of machinery in the very mill upon the property in question; that without this water privilege the machinery of said mill could not be propelled.

12. I utterly deny the allegations contained in the twelfth paragraph of said bill of complaint.

54 13. I neither admit nor deny the allegations contained in the thirteenth paragraph of said bill of complaint, having no information thereof, but require competent proof of the same.

14. I neither admit nor deny the allegations contained in the fourteenth paragraph of said bill of complaint in respect to the ages of the complainants and the assignment of dower of their mother, but deny the other allegations in this paragraph; and aver that the said sale and conveyance to this defendant of the property aforesaid was with the full previous knowledge, approval, and consent of the said Elizabeth W. Walcott, then the widow of William A. Bradley, junior, and then guardian of the complainants; that said complainants were then living with their said mother, and she as well as they were dependent for their maintenance and support upon the revenues derived from said estate then in the hands of the said A. Thomas Bradley; that the said purchase

55 money so paid by this defendant to the said A. Thomas Bradley for the property so conveyed to him was paid to, applied, or expended upon and for the support, education, and maintenance as well of the said complainants as their said mother, and to and for no other use or purpose whatsoever; and that they are estopped from asserting any title whatever in said premises.

And, answering further, I say that I purchased said property in good faith, free from any fraudulent p'actices or pretences upon my part, and in the full belief that I should obtain a good and perfect title thereto; that at the time the mill had become rickerty and dilapidated and needed an immense amount of repairs, and that I intended and contemplated yielding it up; that shortly after or since my purchase thereof I have expended large sums of money upon said property, putting the same in repair, increasing its water privilege and improving the

56 machinery, in detail as follows, namely:

I paid to Wm. Gibson, stone work masonry, about			$505 00
" " " Columbus Thomas, carpenter's work,	"		426 00
" " " R. A. Edmonston, bricklayer, &c.,	"		365 00
" " " Mrs. H. P. Collinson, tinner, &c.,	"		514 00
" " " Albert Prather, millwright,	"		1,500 00
" " " J. T. Cartwright, carpenter (building add'n)	"		1,560 00
" " " H. H. Dodge, 50 inches of water,	"		3,000 00
" " " Offutt, painting roof,	"		50 00
" " " laborers, excavating, & enlarging tail-race,	"		100 00
" " " W. T. Duvall, iron-work,	"		100 00
" " " plumber for drain-pipe,	"		40 00
" " " for new elevators & buckets,	"		238 00
			$7,938 00

Making a total sum of seven thousand nine hundred and thirty-eight ($7,938) dollars which I have expended in making permanent improvements and betterments upon said property; and the time, care, and attention which I devoted to the work myself I esteem fairly and equitably at three thousand dollars ($3,000), making a total of ten thousand nine hundred and thirty-eight dollars ($10,938).

57 Answering further, I say that the sale of some of the property was necessary for the support, education, and maintenance of

said complainants; that the property in question was much dilapidated and would soon have been idle, unproductive, and the source of constant expense in the way of repairs and assessments of the usual annual taxes; that it was to the interest and advantage of said complainants that the same should be sold, and that the proceeds thereof have been applied to and for their benefit.

Answering further, this defendant says he is informed that no division of the said estate was made into four parts, but the same was held in common by and with the express consent of the said William A. Bradley, junior, Sidney S. Edelin, and Jeannette H. Linton during their respective lives, and by and with the consent of the said Elizabeth W. Walcott (then Bradley), who was the widow of the said William
58 A. Bradley, junior, and by his will tenant for life, or widowhood, of his undivided fourth, and by her marriage entitled to dower in said undivided fourth; that said sale to this defendant was by and with the previous full knowledge, consent, and approval of the said Elizabeth W., who was the life tenant of said property and guardian of said complainants, and who received the purchase money paid by said defendant for said property, and applied the same over and above her dower share thereof to the education, support, and maintenance of said complainants, for whom the said Elizabeth W. Bradley was then the legally appointed guardian of said complainants by this honorable court.

And having fully answered, &c., I pray to be hence dismissed with costs, &c.

MARK YOUNG,
Per F. W. JONES, *Att'y.*

WALTER S. COX,
F. W. JONES,
Sol'rs for Def't.

59 DISTRICT OF COLUMBIA, *to wit:*

I, Mark Young, do solemnly swear that I have heard read the foregoing answer by my attorney subscribed, and know the contents thereof, and that the matters therein stated upon my own knowledge are true, and those stated on information and belief I believe to be true.

M. YOUNG.

Subscribed and sworn to this 3d day of June, A. D. 1873.
Before me,

F. W. JONES,
Notary Public.

60 (Copy.)

WASHINGTON, D. C., *June 2d*, 1871.

To MARK YOUNG, Esq.,
Georgetown, D. C.:

D'R SIR: Having full authority as surviving executor, &c., of the last will and testament of the late William A. Bradley, to make sales of his real estate, I hereby offer to sell to you the parts of lots numbered two (2) and three (3) in Deakins & Threlkeld's addition to Georgetown, fronting 126 feet 8 inches on the north side of Water street and the same on the C. & O. Canal (being all of the lots between the canal & Water street, and bounded on the east by Fayette street), for the sum of thirteen thousand nine hundred dollars, to be paid one-third in cash, the residue

in two equal payments at one and two years, to be secured by notes and deed of trust upon the same, with interest at six per centum, and
61 all conveyancing and stamps at your expense, the title to be made unencumbered.

Deeds to be exchanged on or before the 11th of July, 1871, and cash payment made.

(Signed) A. THOS. BRADLEY,
Ex'r & Trustee.

I accept the above.
(Signed) MARK YOUNG.
JUNE 20TH, 1871.
Witness:
F. W. JONES.

62 This indenture, made this 16th day of June, in the year of our Lord eighteen hundred and seventy-one, by and between Robert Ould, formerly of Georgetown, in the District of Columbia, and now of Richmond, in the State of Virginia, of the first part, and Mark Young, of said Georgetown, of the second part, witnesseth:

Whereas by a certain deed of trust bearing date the sixth day of November, A. D. 1850, and recorded among the land records for the District of Columbia, in Liber J. A. S., No. 18, at folios 512 et seq., William A. Bradley, then the owner of said premises but since deceased, did grant and convey the ground and premises hereinafter described unto the said Robert Ould in trust to secure to a certain Sallie B. Miller, of Coshocton, Ohio, the deferred purchase money for the
63 same, as will fully appear by reference to said deed, the same being hereby had and made; and whereas the said William A. Bradley, by his certain other deed of trust bearing date the twenty-first day of December, A. D. 1853, and recorded in the same records in Liber J. A. S., No. 69, at folios 181 et seq., did grant and convey the same ground and premises unto the said Robert Ould in trust to secure to Hugh Caperton the sum of four thousand dollars, as will fully appear by reference to said deed, the same being hereby had and made; and whereas the said indebtedness hath long since been fully paid and discharged, the first within the personal knowledge of said Robert Ould, and the last being evidenced by the hand and seal of said Hugh Caperton, at the foot of these presents, and the property so conveyed hath by divers mesne conveyances become vested in the said Mark Young, as is
64 evidenced by the hand and seal at the foot of these presents of A. Thomas Bradley, the surviving trustee and executor under and by virtue of the last will and testament of the said William A. Bradley, and the purposes for which said trusts in said deeds mentioned were created having ceased and determined, the said Mark Young, by reason of the premises, is now entitled to a conveyance of the property hereinafter described, free and discharged of and from the said trusts.

Now, therefore, this indenture witnesseth: That the said Robert Ould, for and in consideration of the premises and the sum of one dollar to him in hand paid by the said Mark Young, at the ensealing and before the delivery of these presents (the receipt whereof is hereby acknowledged), hath granted, remised, released and confirmed, and doth hereby grant, remise, release, convey, and confirm, unto the said Mark
65 Young, his heirs and assigns, forever, all that parcel of ground and premises lying and situate in Georgetown, in the District of Columbia, and known upon the public plats and plan of said town and

its additions as and being all those parts of the lots numbered two (2) and three (3) in Peter, Beatty, Deakins, & Threkeld's addition to said town, which lies south of the Chesapeake and Ohio Canal, west of Fayette street and north of Water street, the same fronting one hundred and twenty-six (126) feet and eight (8) inches on Water street, and about the same distance on the line of the Chesapeake and Ohio Canal, together with the buildings and improvements thereon and the easements, privileges, hereditaments, and appurtenances thereto belonging or in any wise appertaining, to have and to hold the same unto and to the only proper use of the said Mark Young, his heirs and assigns,
66 forever, free, released, and discharged from the effect and operation of the two deeds of trust hereinbefore referred to.

In testimony whereof the said Robert Ould hath hereunto set his hand and affixed his seal the day and year first hereinbefore written.

ROBERT OULD, [SEAL.]
Trustee.
HUGH CAPERTON, [SEAL.]
A. THOS. BRADLEY, [SEAL.]
Surviving Ex. & Trustee under Will of W. A. Bradley, dec'd.

Signed, sealed, & delivered in the presence of—
RICHARD FOX, HENRY B. HILL, as to Robert Ould.
As to Hugh Caperton & A. Thos. Bradley—
F. W. JONES,

STATE OF VIRGINIA,
City of Richmond, to wit:

67 I, Jno. F. Meredith, a justice of the peace in and for said city and State, do hereby certify that Robert Ould, party to a certain deed bearing date the 16th day of June, A. D. 1871, and hereto annexed, personally appeared before me, in my city and State aforesaid (the said Robert Ould being personally well known to me as the person who executed the said deed), and then and there the said Robert Ould acknowledged the same to be his act and deed.

Given under my hand and seal this sixteenth day of June, A. D. 1871.

[SEAL.] JNO. F. MEREDITH, *J. P.*

STATE OF VIRGINIA,
City of Richmond, to wit:

I, Andrew Jinkins, clerk of the hustings court in and for said city and State, a court of record and of law, having official cognizance of the fact, do hereby certify that Jno. F. Meredith, esquire, whose gen-
68 uine signature is appended to the foregoing certificate of acknowledgment, was at the time of making the same a justice of the peace in and for said city and State, as he purports to be.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court this sixteenth day of June, A. D. 1871.

[SEAL.] ANDREW JINKINS,
Clerk.

69 *Separate answer of F. W. Jones.*

In the supreme court of the Dist. of Columbia. In equity.

P. M. BRADLEY ET AL. vs. MARK YOUNG ET AL. } No. 3153.

Answering said bill, or so much as I am informed it is necessary for me to answer, I admit the allegations of the 10th paragraph to be true, that I have no interest in the matter save as trustee in said deed; that I neither admit nor deny the other allegations of said bill, but require them to be fully proven; & being answered, &c., &c.

F. W. JONES.

I, Frederick W. Jones, do solemnly swear that I have read the foregoing answer, by me subscribed, and know the contents thereof, and the matters and things therein stated upon my own knowledge are true, & those stated upon information & belief I believe to be true.

F. W. JONES.

Subscribed and sworn to this 5th day of June, A. D. 1873.

SAM'L C. MILLS.
Justice of the Peace.

70 *The answer of H. H. Dodge.*

Sup. court of the District of Columbia.

BRADLEY ET AL. v. YOUNG ET AL. } 3153. Eq. doc. 12.

This respondent, in answer to the averments contained in paragraph No. 12, says:

It is true that said Mark Young being indebted to him as stated, executed the deed of trust referred to. The first of said notes was duly paid & the other two yet remain unpaid. The said indebtedness was for 50 inches of water assigned by respondent to said Young, for use in propelling the machinery of his mill, formerly the property, as it was said, of Wm. A. Bradley, dec'd, which water had been leased to respondent by the Chesapeake & Ohio Canal Company.

71 As to the other matters set forth in said bill respondent does not know and cannot admit anything, but requires the same to be proved, as far as they may be material to any rights or interests of his in the subject matter of this suit.

And he prays to be hence dismissed with his reasonable costs.

H. H. DODGE.

I do solemnly swear that I have read the answer aforesaid by me subscribed, & know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information & belief I believe to be true.

H. H. DODGE.

Sworn to and subscribed before me this 5th day of June, A. D. 1873.

[SEAL.] SAM'L C. MILLS, *J. P.*

72 In the supreme court of the District of Columbia, the 12th day of June, A. D. 1873.

POWELL M. BRADLEY ET AL. v. MARK YOUNG ET AL. } No. 3153. Eq. doc. 12.

On motion of the solicitor for the complainants, it is by the court ordered that the bill of complaint be and the same hereby is taken pro confesso against the defendants Walter S. Cox, Elizabeth W. Walcott, and Christopher C. Walcott, for want of an appearance.

By the court.

A. WYLIE.

73 In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL. v. MARK YOUNG ET AL. } No. 3153. Eq. doc. 42.

The complainants hereby join issue with the defendants Mark Young, Henry H. Dodge, and Fred'k W. Jones.

DAVIDGE & R. FENDALL,
Sol'rs for Compl't.

74 In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL. v. MARK YOUNG ET AL. } No. 3153. Equity docket 12.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The answer of A. Thomas Bradley, one of the defendants in this above entitled cause, respectfully shows unto your honors:

1. He admits the facts stated in the first paragraph of the bill.

2. He admits the second paragraph and submits the will of William A. Bradley to the construction of this court.

3. He admits as alleged that your orators were and are the children of William A. Bradley, junior, and that no division of the estate of William A. Bradley into four parts, as directed by said will, was
75 ever made, for the reason that all the parties in interest, Jeannette H. Linton, Sidney T. Edelin, and William A. Bradley, junior, for himself and his children, objected to the same, and asked that the estate might be preserved undivided, and they and each of them receive their proportionate share of the annual income thereof. He admits that the widow of William A. Bradley continued in possession of his residence until her death; that the "Corning property" was by the testator in his lifetime conveyed to Alfred Edelin, in fee. That William A. Bradley, junior, father of your orators, died in March, 1869, as alleged; that the said William A. Bradley, junior, left a last will and testament executed to pass real estate, and fully admitted to probate in this court on the 1st day of May, 1859, which said will he submits to the construction of this court; he admits that in February, 1872, said Elizabeth W. Bradley intermarried with said Christopher C.
76 Walcott; that Sidney T. Edelin died without issue in 1870. That

Jeannette H. Linton also died without issue in 1871. As to what portion of the estate of William A. Bradley your orators are entitled to he submits to the construction of this court, and in addition thereto that which is devised them by the will of their father above referred to.

4. As to the fourth paragraph of complainant's bill this defendant says that as to the division of said estate of said William A. Bradley he has already fully answered why such was not in point of fact done or made.

That as to the trusts and powers invested in this trustee under the construction of said will of said William A. Bradley, as he was advised by counsel shortly after his death, and then and until recently believed to be correct and true, he held and dealt with the whole of said estate as had theretofore been done by him and said William A.
77 Bradley, junior, in his lifetime and not otherwise, and he now submits to the judgment and construction of this honorable court whether or not (if any other) interpertation, particularly that set up by the plaintiffs, is the true interpertation of said will.

5. This defendant admits that William A. Bradley died seized and possessed of certain real estate in Georgetown, District of Columbia, the exact bounds and dimensions of which he cannot give; he was only guided by the tax bids of the collector of taxes at Georgetown, and for such property as described by him. This defendant paid taxes, charged the same, and received credit for his disbursements from persons representing the estate of William A. Bradley; he admits that Mark Young was a tenant of a part or portion of this property, as also the lease referred to, and the renewal of the same referred to in this paragraph, without admitting the dimensions, the value or rental value, as al-
78 leged, and that the Cumberland Coal and Iron Company, or its assignee "The Consolidation Coal Company" (or by whatever name it may be known), is the present tenant of another portion of said property, the metes and bounds of which this defendant is not able to state from memory, but which will appear by reference to said lease of the same now in possession of the plaintiffs.

6. He knows nothing in regard to the facts, as alleged, concerning the business of the Consolidation Coal Company.

7. To the seventh paragraph this defendant says: He admits that in June, 1871, he sold to the defendant Mark Young that part of the aforesaid real estate known to this defendant as the "mill property," at that time rented to and occupied by said Young, upon the terms set out by the plaintiffs in their bill, and executed therefor the deed a copy of which is filed in this cause marked P. M. B., Exhibit No. 3.
79 That prior to said sale said Young had been the tenant of said "mill property" for a long time, always prompt in the payment of his rent, and had given notice to this defendant that he would vacate the same unless certain necessary repairs were made thereon, or unless he could purchase the same.

That, after a personal inspection and upon careful enquiry, this defendant ascertained that said repairs would cost about six thousand dollars ($6,000), a charge which the estate could not meet and promptly discharge, and after conferring with counsel of character and standing in this District who had always been the confidential adviser and friend of the parties in interest, and whose judgment had always been consulted by this defendant in the management of his trusts, it was deemed by him advisable to offer to sell said "mill property" to said Mark Young, which said defendant communicated to said F. W. Jones as at-
80 torney for said Young, and that he would entertain an offer for the same.

That said defendant, Jones, shortly thereafter presented on behalf of said Young a written proposition to sell, for this defendant to sign, which this defendant signed in duplicate, and said Young accepted said offer, and the terms thereof are those stated in said deed. This defendant relied for the statement of the metes and bounds of said property upon those stated in said proposition, and believed they were those which contained the property at that time occupied by said Young and known to this defendant as the "mill property."

He continued to collect the rent from said coal company for some months after sale without objection from said Young, until he was advised by either said Young or his attorney (which this defendant does not now remember) that the coal company occupied a portion of the land which had been conveyed to him by this defendant. This
81 was a matter of surprise to this defendant, but having full faith and confidence in the parties he admitted the fact, and thereafter (when in funds) paid said Young his proportionate share of the rents collected from the coal company until this defendant ceased to have charge of said property.

This defendant well believed from legal advice he from time to time had, as also by his own reading of said will of said William A. Bradley, that he had full power to sell and convey the said "mill property," and he was led to the opinion and fully supposed he had full power to sell and convey the same, and in point of fact supposed he was selling that portion of the property then occupied by said Mark Young; but as soon as this defendant was informed by the purchaser (or his attorney) that he had conveyed more than he supposed he would convey, having full faith and confidence in the parties, he agreed to pay
82 the purchaser his portion of rent received.

The origin of said sale was that said Young threatened to vacate the property he rented unless he could have heavy repairs put thereon, or could buy the same, and this defendant had a right to believe, and did believe, that the said "mill property" was that which was in negotiation and no other, and he avers and charges that if any other or more land was so conveyed it was through a mistake made by said Jones (defendant), and grew out of the trusts and confidence with which this defendant accepted the description of said land which was furnished him.

This defendant, further answering, says he does not know what the fair value of the lands and privileges set up by the plaintiffs in their seventh paragraph is, nor does he know whether the other facts mentioned in this paragraph are true, excepting that said Young and said Jones knew that this defendant was acting in a *judi*ciary capacity,
83 and he avers and charges that had he been aware that his deed to said Young embraced more land than said Young had under rent from him, this defendant, he would not have executed the said deed.

8. This defendant says that since the sale and conveyance of the property in question to said Mark Young this defendant has received no rent from him; of the other facts stated in this paragraph he knows nothing.

9. Of this he knows nothing.

10. He admits the facts as stated.

11. He knows nothing.

12. He knows nothing.

13. He admits the fact that he and William A. Bradley, junior, took possession of the estate of William A. Bradley, and at all times acted

conjointly in the management of the same, under the advice of counsel well qualified, until after the death of said William A. Bradley,
84 junior, when this defendant, as surviving trustee, conducted all matters relating thereto in the same manner as has been done during the life-time of said William A. Bradley, junior.

14. The matters and things mentioned in this paragraph are submitted to the court.

Having answered all and every of the allegations made in this bill, this defendant prays to be dismissed with costs.

A. THOS. BRADLEY.

DISTRICT OF COLUMBIA, *to wit:*

Personally appeared before me A. Thomas Bradley, and solemnly swears that he has read the within and foregoing answer, and knows the contents thereof, and that the matters therein stated as of his own knowledge are true, and those stated upon the information of others he believes to be true.

A. THOS. BRADLEY.

Sworn to and subscribed before me this 26th day of June, 1873.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS, *Asst. Clk.*

85 In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL. *v.* MARK YOUNG ET AL. } No. 3153. Eq. doc. 12.

The compl'ts hereby join issue with the def't A. Thomas Bradley.

DAVIDGE AND R. FENDALL,
Sol'rs for Compl'ts.

86 In the supreme court of the District of Columbia the 24th day of September, A. D. 1873.

POWELL M. BRADLEY ET AL. *v.* MARK YOUNG ET AL. } No. . Eq. doc.

On motion of the solicitors for the complainants it is ordered that the time for taking testimony in this cause be, and the same hereby is, extended for thirty days from this day.

D. C. HUMPHREYS, *Justice.*

I consent to the above.

F. W. JONES.

87 To the supreme court of the District of Columbia. In equity.

The supplemental bill of Powell M. Bradley, Frederick W. Bradley, and Maria G. Bradley, infants, and suing by Richard B. L. Macrae, their guardian and next friend, shews:

That the lease to the Consolidation Coal Company having expired on the 1st of March, 1874, the leased premises were on said day duly surrendered by said company to your orators, who, through their said guardian, entered into possession of said premises, and have since held the same.

And your orators shew that the said Mark Young is now engaged in the work of destroying the trestle-work between the property of your orators south of Water street, in the bill particularly mentioned, and the canal, to the great detriment of your orators, and notwithstanding the property in fact held under said lease is in the actual and manual possession of the bailiffs of your orators, put there for the
88 protection of said property.

And your orators shew that the said Young pretends, as they are informed and believes, that the trestle-work so far destroyed is not within the precise boundaries of the property leased to said company, but they see that the said trestle-work is upon the property in fact held by said company and by it surrendered to your orators; and further that they have reason to believe and so believe that the said Young intends to destroy the trestle-work upon the property leased in terms to said company, notwithstanding your orators' possession thereof and the pendency of this suit involving the title of said Young thereto.

Your orators pray that the said Young may be enjoined from in any manner interfering with the trestle-work over or connected with the property in fact held by said company and by it surrendered to your orators, or with any of the property held in fact by said company and by it surrendered to your orators, whether the said trestle-work
89 or property be within the precise boundaries of the property or not.

Personally appeared in open court this 7th of March, 1874, Reginald Fendall and made oath in due form of law that the guardian of the complainants in said will is beyond the jurisdiction, but that affiant is the agent and solicitor of such guardian, and that the matters and things stated in said supplemental bill are true to the best of his knowledge and belief.

REGINALD FENDALL.

Sworn before me March 7, 1874.

R. J. MEIGS, *Clerk.*

90 In the supreme court of the District of Columbia, March 7, 1874.

POWELL M. BRADLEY ET AL., COMPLAINANT, *against* M. YOUNG ET AL., DEFENDANT. } No. 3622. Equity doc. 13.

The President of the United States to Mark Young, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, Chief Justice.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Asst. Clk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

91 *Restraining order.*

A supplemental bill praying for an injunction to restrain you from in

any manner interferring with the trestle-work upon or connected with the property lately held by the Consolidation Coal Company, under the lease from A. Thomas Bradley, trustee, mentioned in the original bill of complaint, is this day filed. Hearing is fixed for March 12th, 1874, at 12 o'clock m. Until further order, you are hereby restrained as prayed.

By order of the court.

D. K. CARTTER,
Chief Justice.

Attest:

Clerk, &c.

92 Summoned and served notice for injunction on M. Young, 10 o'clock & 20 minutes.

ALEX. SHARP,
Marshal.

MARCH 7TH, '74.

93 In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL.
vs.
MARK YOUNG.
} In equity. No. 3260. Eq. 12.

The answer of Mark Young to the supplemental bill filed in this cause on the 7th instant.

Answering said bill, I say:

1. I deny that the lease to said coal company expired on the 1st of March, 1874, as alleged, but say the same expired on the 6th day of March.

2. I deny that the said coal company surrendered possession of said premises to the plaintiffs, or that the plaintiffs entered into the possession thereof as alleged, or that they hold the same; I say further that I gave the said company due and proper notice of six months to vacate said premises at the end of said lease; that in pursuance of said notice the said company for several days prior to the expiration of said lease engaged in removing from said premises such personal property
94 as it had a right to remove, with a view and intention, as this respondent is advised and believes, of surrendering the possession to this respondent, pursuant to his said notice and right to the possession by reason of the expiration of said leave.

3. I deny that I was or have been engaged in the work of destroying any trestle-work upon the property leased, but say that on the east side of my mill, and in the bed of Fayette street, a public highway dedicated to the use of the public since the year 1785, there was a small quantity, comparitively, of trestle-work, which was both a public nuisance in occupying a public street, and also a private nuisance to this respondent's mill, darkening its light and cutting off access from said street to said mill; and supposing the use of this to be no longer necessary, and desiring to abate this public and private nuisance, this respondent admits that he was causing this trestle-work to be removed, but he
95 denies that he attempted to destroy any trestle-work upon the property actually leased, and that it is as much for the interest of this respondent as it can be for the plaintiffs that the other trestle-work should NOT be destroyed, for that whatever may be the ultimate decision in this cause as to the ownership of the property as between the plaint-

iffs and this defendant, this other trestle-work is beneficial to the owner thereof.

4. And, further answering, this defendant says that when this restraining order was served upon this respondent, the said trestle-work in Fayette street was nearly all removed; that by a decision of this court made in the cause of Herr & Welsh vs. this Coal Company, and in respect to this identical trestle-work on this identical spot (Fayette street), it was announced that said company had no right to use said street for said trestle-work; and presuming upon this decision, together with the fact
96 that the said company had vacated the leased property, and the determination of this respondent to make no lease or contract as owner of said property which would permit the further or future use of said street by said trestle-work, this respondent was bona fide engaged in removing said trestle-work; that it now remains in a dangerous condition as to passengers on the street and should be completely removed, and he prays therefore that said restraining order may be dissolved or so modified as to permit this respondent to complete the removal of said trestle-work from Fayette street.

And having fully answered, &c.

M. YOUNG.

I, Mark Young, do solemnly swear that I have heard read the foregoing answer by me subscribed and know the contents thereof, and that the matters and things therein stated upon my own knowledge
97 are true, and those stated upon information and belief I believe to be true.

M. YOUNG.

Subscribed and sworn to this 13th day of March, A. D. 1874, before me.

[SEAL.] F. W. JONES,
Notary Public.

98 POWELL M. BRADLEY ET AL. *vs.* MARK YOUNG. } No. . Eq. doc.

It is agreed that the time for taking testimony in the above-entitled cause be extended until the 1st Tuesday of September next, July 21, '74.

W. D. DAVIDGE,
For Comp'ts.
F. W. JONES,
For Def'ts.

In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL. *v.* MARK YOUNG ET AL.

It is by court, this 24 day of July, A. D. 1874, upon consent of parties, ordered that the time for taking testimony in this cause be, and the same is hereby, extended until the first Tuesday of September next.

By the court.

99 In the supreme court of the District of Columbia.

BRADLEY ET AL. *vs.* YOUNG ET AL. } In equity. No. . Doc.

For complainants.

DIST. OF COLUMBIA,
County of Washington, ss :

Be it remembered that at an examination of witnesses begun and held on the 27 day of Sept., A. D. 1873, and continued from time to time by adjournment until the 19 day of August, A. D. 1874, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at my office, No. 342 D street, in the city of Washington, in said Dist., the within-named witnesses, to testify on the part and behalf of the complainants in a certain cause now depending in the supreme court of the Dist. of Columbia, wherein
100 is complainant and defendant Bradley et al., Young et al.

J. J. JOHNSON,
Examiner.

Bradley, A. T..... 1
Winship, H. C..... 13
Mehaffey, J. J..... 23
Tennay, W. H..... 37
Davis, J. L..... 75
Tenney, J..... 80

In the supreme court of the District of Columbia.

BRADLEY YOUNG ET AL. } Eq.

Please take notice that the complainant in this cause desires the evidence to be adduced in the cause to be taken orally, and will proceed to examine such witnesses on the part of the complainant before J. J. Johnson, an exam'r in chancery, at his office No. 342 D street, opposite the City Hall, on Thursday next at 11 a. m., as may then and there, or at any adjournment thereof, be produced, to be used in the hear-
101 ing of the case, at which time and place you are hereby notified to appear and re-examine said witnesses if you shall see fit.

July 20th, 1874.

REG'D FENDALL,
For Compl.

To S. W. JONES, Esq.,
For Def'd'ts.

Ordered, that Thursday next, the 23rd inst., be fixed for the examination before me of witnesses for the complainant in his cause, at 11 a. m. o'clock, over at my office, No. 342 D street.

July 20, 1874.

J. J. JOHNSON, *Exam'r.*

Service acknowledged this 20th day of July, 1874, but no right or privilege of objection thereby waived.

F. W. JONES,
For Def'd't.

EXHIBIT A.

WASHINGTON, *June 2nd*, 1874.

To MARK YOUNG, Esq.,
Georgetown, D. C.:

102 D'R SIR: Having full authority, as surviving executor, &c., of the last will and testament of the late William A. Bradley, to make sales of his real estate, I hereby offer to sell to you the parts of lots numbered two (2) and three (3) in Deakins and Threlkeed's addition to Georgetown, fronting 126 feet 8 inches on the north side of Water street, and the same on the C. & O. Canal (being all of the lots lying between the canal and Water street, and bounded on the east by Fayette street), for the sum of thirteen thousand nine hundred ($13,900) dollars, to be paid one-third in cash, the residue in two equal payments at one and two years, to be secured by notes and deed of trust upon the same, with interest at six per centum, and all conveyancing and stamps at your expense, the title to be made unencumbered; deeds to be exchanged on or before the 11th of July, 1871, and cash pay-
103 ment made.

A. THO'S BRADLEY,
Ex. & Trustee.

I accept the above.

M. YOUNG.

JUNE 2ND, 1871.

Witness:
J. W. JONES.

In the supreme court of the District of Columbia.

BRADLEY
vs.
YOUNG ET AL. } Equity.

Please take notice that the complainant in this cause desires the evidence to be adduced in the cause to be taken orally, and will proceed to examine such witnesses on the part of the complainant before J. J. Johnson, an examiner in chancery, at his office No. 342 D street, opposite the City Hall, on Saturday next, the 27th day of Sept., 1873,
104 at 10 o'clock a. m., as may there and then or at any adjournment thereof be produced, to be used on the hearing of this cause; at which time and place you are hereby notified to attend and cross-examine said witnesses if you shall see fit.

24th day of September, 1873.

DAVIDGE & R. FENDALL,
For Complainants.

To F. W. JONES, Esq.,
Sol. for Defendants.

Ordered, that Saturday the 27th inst. to be fixed for the examination before me of witnesses for the complainant in this cause at 10 o'cl'k a. m., at my office No. 342 D street.

Sept. 24, 1873.

JOHN J. JOHNSON,
Exam'r in Chancery.

Service of above notice acknowledged this 24 day of September, 1873.

F. W. JONES,
For Defendant.

BRADLEY ET AL.
v.
YOUNG ET AL.

SATURDAY, *Sept. 27th*, 1873—10 o'clock a. m.

Met persuant to notice herewith attached.

Present counsel for complainants, when A. THOMAS BRADLEY,
105 being duly sworn, says:

I reside in Montgomery County, Maryland. Profession, lawyer. I am 44 years of age. I am in the practice of my profession in this District.

I know the complainants and have known them all their lives. I know their guardian and have known him for upwards of fifteen years.

I also know the defendants and have known them for a number of years.

I knew William A. Bradley, s'r. He died some time in August, 1867. I was with him when he died. He was my father's first cousin, and my relations with him towards the latter part of his life were more intimate than with anybody else, according to his declaration to me. He left a widow named Sidney Ann Bradley. He left three children, William A. Bradley, jr., Jeanette H. Linton, and Sidney T. Edelin. At the
106 time of his death Jeanette H. Linton was a widow without children; her husband, John A. Linton, died several years previous.

Sidney T. Edelin, at the time of the death of her father, was intermarried with Dr. Alfred Edelin. Mrs. Jeanette H. Linton died in January, 1870. Mrs. Sidney T. Edelin died in May or June, 1870. She died at Corning, New York. I was with her when she died. Both of these ladies died childless. Mrs. Sidney Ann Bradley, the wife of William A. Bradley, died, I think, in September, 1868, at Cumberland, Maryland. I was present a few hours after her death and brought her body to Washington. William A. Bradley, jr., died some time in the early spring of 1869. He died in California. He left three children, the complainants in this cause. He left a widow named Elizabeth W., who has since intermarried with one Christopher C. Wolcott, one of the defendants. They were intermarried on the eighth or ninth of February, 1872.

107 William A. Bradley, sr., left a will, which was admitted to probate shortly after his death. I was one of the executors and trustees named in the will, and William A. Bradley, jr., was the other. We both qualified as executors. William A. Bradley, jr., also left a will.

All the complainants were living at the death of their father.

William A. Bradley, jr., acted with me as co-executor and co-trustee under the will of his father until he was ordered to California. He was a surgeon in the U. S. Army. While he was here we acted together as executors and trustees at all times. After he went to California I had sole charge of the estate. He went to California about the summer of 1868. The estate of William A. Bradley was never divided as directed by his will, and for the reason that his three children, who were of age, and
108 William A. Bradley, jr., who represented his children, always preferred that the estate should remain in bulk and undivided, and the net income should be divided into four parts and distributed

under the will. I always urged a division according to the will, but felt constrained to yield to their wishes.

The widow resided in the house on New York avenue, mentioned in the will, until her death. We regularly paid to her the third part of the net income as prescribed by the will.

The "Corning" property mentioned in will was conveyed to Dr. Alfred Edelin after the execution of the will and before the death of the testator.

William A. Bradley died seized of a considerable amount of real estate lying in the District of Columbia. Among his property was a mill fronting on the south bank of the Chesapeake and Ohio Canal in Georgetown, D. C. At the time of his death, and for some time
109 previous, that property was under lease and occupied by Mark Young, a defendant in this cause.

I think at the time of the death of William A. Bradley he paid a rent of $2,000 per annum. At the expiration of that lease William A. Bradley, jr., and myself renewed the same at a reduced rent of fifteen hundred dollars.

The rent was reduced for the reason that Mr. Bradley, in his lifetime, often said to me that Mark Young was a prompt and faithful tenant; that he had originally leased the property at $700 a year, and had voluntarily increased it to the sum of $2,000 a year, as he said his business justified the increase. Mr. Bradley also requested that his executors or trustees should do nothing to disturb Mark Young or the coal company in the occupation of the property held by each of
110 them, and to let Mark Young stay there as long as he wanted at such annual rent as the trustees and he might agree upon.

Adjoining the mill property, occupied by Mark Young, on the west was another piece of property which was at his death leased to the Cumberland Coal and Iron Company, and occupied by them, as Mr. Bradley informed me. These two pieces of property are on the north side of Water street and between it and the south bank of the canal. The Cumberland Coal and Iron Company, as I was informed by William A. Bradley, leased and occupied, together with the property above mentioned lying west of the mill property, another piece of property situated on the south side of Water street and between it and the channel of the Potomac River.

111 These two pieces of property—that is, the wharf property and that lying west of the "mill property"—were used by the Cumberland Coal and Iron Company in common for the purpose of transporting coal from canal boats coming down the canal to the wharf by means of railway trucks, supported by high trestle-work, and stretching from canal bank to points on the bank of the river. This trestle-work, of course, supports the trucks over Water street.

I had no knowledge of the dimensions of the "mill property," or the property adjoining it on the west, at the time I sold, or attempted to sell, to Mark Young. I only knew them as two pieces of property—one occupied by Mark Young, and the other by the Coal Company—for which they paid rent promptly. I had never had occasion to make
112 any inquiry in regard to the dimensions of either of these pieces of property.

The way I came to make the sale to Mark Young was as follows:

His lease was about to expire; he notified me that he was unwilling to renew the lease unless I put the property in good repair, and that he was about purchasing another mill-site. I made enquiry of several persons, whose names I don't now recollect, whom I thought were quali-

fied to give me an estimate of the amount of the cost for the repairs needed. Their estimate ranged from five to six thousand dollars. I knew not how the estate could bear such a charge. After consulting with one whom I considered to be a good friend to the complainants, and with whom I had always consulted in matters relative to the estate, with his assent I offered to sell the "mill property," then in his
113 occupation, to Mark Young for the sum of $13,900. This offer was made verbally to Young, in the presence of his attorney.

Subsequently, a paper was handed to me by F. W. Jones, esq., the attorney for Young, with a remark that "I had better put my offer in writing." I thereupon signed the paper. My understanding throughout was that the offer for sale related to the property then in the occupation of Mark Young, and to none other. No other property had been talked about. As I have before stated, I knew nothing of the dimensions of the "mill property" referred to. When I signed that paper I supposed it related exclusively to that property which Mark Young held under lease, known as the mill property.

Had I supposed the paper embraced any other property than that for which Mark Young had been paying me rent, I would not have
114 signed it. I did not know at that time the value of the property lying west of the "mill property," nor do I now know the value of that property. I had no intention whatever of disposing of any portion of the property under lease to the Coal Company, and did not suppose I was so doing.

The paper which I signed, and have above referred to, was a paper in the handwriting of F. W. Jones, esq. It was executed in his office by me and by him, as attorney for Mark Young.

Subsequently, two correct copies of that paper were prepared and executed by me and Mark Young. I left the original with Mr. Jones, because he said he wanted to prepare two copies. After the execution of the two copies by Mark Young and myself I don't know what became of the original. I took one of the copies, and the paper now shown me is that copy. I do not positively know where these copies were
115 executed. My impression is that we met at the corner of Louisiana avenue, near the Bank of Washington, and Young and I stepped into Ruff's or the Bank of Washington (I think the latter) and executed the paper.

(The said paper is here produced and shown to the witness and marked Exhibit A.)

Witness, resuming, says:

The paper is signed by me as executor and trustee. It is also signed by Mark Young. The words "I accept the above, June 2nd, 1871, witness, F. W. Jones," are in the handwriting of F. W. Jones, esq. I do not know in whose handwriting the body of the paper is. Subsequently the sale was consummated and I executed a deed in favor of Mark Young, in pursuance of the within agreement hereto, marked A. Before the execution of the deed, nothing whatever transpired to indicate that there had been a mistake in the description of the dimensions
116 of the property sold. I continued in the belief that the sale related exclusively to the "Mill property," leased to and occupied by Young.

After the execution of the deed I continued to collect from the coal company for several months rent for the whole property under lease to the company, until I was informed that I had conveyed to Mark Young that portion of the property leased to the coal company bordering on the canal. I was much surprised and said it could not be so. The deed

was then shown to me and I found that I had unintentionally sold and conveyed to said Young all the property bordering on the south bank of the canal, running south to the north line of Water street. I had not so intended to sell and convey, but as I had made the bargain in good faith I felt bound to abide by it, and thereafter paid Young a portion of the rent which I received from the coal company. Throughout
117 the transaction I had the fullest confidence in the parties with whom I was dealing, and consequently signed the papers as they were brought to me, and did not make that examination of the dimensions of the property which I would otherwise have done. When I saw I had made a mistake I saw nothing could be done but to accept the situation. I did not take counsel, as I recollect, after discovering the mistake. A little more than a year after I discovered the mistake the estate passed out of my hands.

A. THOS. BRADLEY.

Adjourned till Monday next, the 29th inst., at 11 a. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.

118 Present, counsel for the complainants, and the witness A. Thomas Bradley, when the foregoing deposition was read once to the witness and signed by him.

No counsel appearing to cross-examine the witness, and after waiting an hour, the examination was adjourned till Wednesday next, the 1st of October, at 2 o'clock p. m.

J. J. JOHNSON, *Ex.*

Met pursuant to adjournment.

Present, counsel for complainants.

Counsel for defendant absent; when the examination was further adjourned till Friday next, at 2 o'clock p. m.

J. J. JOHNSON,
Exam'r.

Met pursuant to above.

Present, counsel for the complainants.

Counsel for defendants absent; when—

HENRY C. WINSHIP, being duly sworn, says:

119 I am 33 years of age; I reside in Georgetown, D. C.; I am a shipper of coal by occupation. I am the agent of Messrs. Gilmore Meredith & Co., who are the general shipping agents of the "Consolidation Coal Company of Maryland," who are the successors of the "Cumberland Coal and Iron Co." The business for which I am agent is carried on in Georgetown. The business is carried on at two wharfs in Georgetown, one rented from the Linthecum estate, and known as Wharf No. 1; and Wharf No. 2 is rented from the Bradley estate. The office of the company is located on Wharf No. 1.

The canal boats are brought alongside of the wharf on the canal. The coal is hoisted out by steam and dumped into cars standing on the canal wharf. The cars are then pushed by hand along a railway
120 supported by trestle-work to the river wharf & then dumped into vessels or on the wharf as the convenience of the business requires.

The distance from the canal front to the river front is about ninety yards in the case of the Bradley wharf. The other is about three hundred yards. The Bradley property is more valuable for our business

than the Linthecum property, because of the shortness of the distance, and requires less labor and time to do the work.

The capacity of the Bradley wharf is about eight boats every ten hours. The Linthecum wharf the same. We can discharge coal over the Bradley wharf about one dollar per boat less than we can over the Linthecum wharf, which is a saving of about eight dollars per day, where the wharf is worked at its full capacity for ten hours.

121 Except for the purpose of storing coal on the river wharf, the Bradley wharf has the same facilities for our business as the Linthecum wharf, the storing capacity of the Linthecum wharf being about thirty thousand tons, while that of the Bradley wharf about eight thousand.

The trestle-work is to support the trucks so as to transport the coal from the canal to the river front without interfering with the ordinary traffic on Water street, and also to overcome the difference between the elevation of the bed of the canal and tide-water.

That difference is about thirty feet.

The property leased and occupied by the Consolidation Coal Company consists of the ground lying between Tennay's mill and the mill

122 property occupied by Mark Young, immediately west of the Mark Young property. I should say the front on the canal to the west of Mark Young's mill was ninety feet. This property runs through to Water street, about the same width fronting on Water street.

The improvements on this ground consist of one large brick warehouse four stories high and an attic *high*.

The ground between the warehouse and Mark Young's mill is covered by the trestle work over which the cars pass to the river front.

The warehouse fronts on Water street and runs clear through to the canal front a distance, I should think, of sixty or seventy feet. The warehouse is situated on the west side of the property. I should think the warehouse is about forty feet front. The rental value of the

123 warehouse is about $500 per annum. Immediately on the line of the canal are the derricks and other hoisting apparatus of the company, consisting of steam-engine, &c.

The other part of the Bradley property, leased to the coal company, and lying on the canal, is immediately in front of the Mark Young mill, and between it and the canal. Along the whole front of the "mill property" is occupied by our railway track and hoisting machine, and east of the "mill property" we have our track and trestle-work running through to the portion of the property fronting on the river. Our use of the property immediately in front of the "mill property" is subject to the right of the tenant of the mill to unload grain in turn.

The other portion of the property leased by the Bradley estate to our company is located south of Water street, immediately south or

124 southeast of the property described on the canal front. It fronts about 120 feet on Water street, and runs through of that width about 112 feet on the west side, and about 80 feet on the east side to the river, varying according to the line of the river which strikes the property irregularly.

The water front of this property is about sufficient for one vessel's width of the largest class, carrying about 800 or 1,000 tons.

The business of shipping coal is extensively carried on in Georgetown, and is confined between Aequeduct bridge west and the Consolidation Coal Company No. 1 at the foot of Market street, and being a distance

of about three squares, or say about 1,000 feet, on the canal and river fronts.

Under the present system of handling coal this locality of a
125 front of about 1,000 feet is the only one available for the business.

There is a demand for more property for the business. Owing to the lack of available property a large proportion of the trade has been compelled to go to Alexandria, Va.

About six hundred thousand tons of coal was shipped last year from Georgetown and about two hundred and fifty thousand from Alexandria, owing to the want of available space in Georgetown under the present system of loading.

The whole property fronting on the river is used for stocking as well as shipping coal and is covered by trestle-work for the distribution of coal over the yard. There may be a space of a few feet between the warehouse and the towpath of the canal on the north side of the warehouse.

The value of the Bradley lot between Water street and the Potomac River entirely depends upon the possession of the water front of
126 the canal. Without the canal-water front the property is of no value for the shipping of coal under the present system, but off from the canal I would not give $2,500 for the property south of Water street. I would consider that to be its value for general purposes irrespective of the shipment of coal.

Taking the property south of Water street in connection with the property leased to the Consolidation Coal Company and including the "mill property" of Mark Young, the whole is not worth less than $30,000.

The Consolidation Coal Company pays a rent of $1,200 and keeps up all repairs of the property.

I consider we have a very favorable lease of the property and would not hesitate to renew the lease at that or even a higher rent.

Without the Mark Young "mill property" the property leased to the Consolidation Coal Company north and south of Water street is
127 worth sixteen thousand dollars. I think it could be sold for that without any trouble. I know it could be sold for that. Property capable of about the same current coal business is worth from four to six thousand dollars rental per annum.

The stocking capacity of the property between Water street and the river is about 8,000 tons, which in ordinary times is ample for the business done over the wharf, the layer area being only necessary when there is a lack of tonnage to carry the coal away promptly.

If the Mark Young "mill property" was sold and also the warehouse occupied by the Consolidation Coal Company and leased by them, reserving the property between the warehouse and the "mill property," the property between Water street and the river would still be available for coal purposes, and be correspondingly valuable. It would be
128 worth from eleven to twelve thousand dollars. I heard of the sale by Mr. A. Thomas Bradley to Mr. Mark Young some time after the sale. Young notified me not to pay but one-half of the rent to Bradley. Some time after I met Mr. Bradley and told him what Young had said. He seemed surprised and said that Mark Young had no right to any of the rent; that his sale did not interfere with any of the coal property, or words to that effect.

The difference between them continued for some time, when Mark Young came to me and told me to pay the rent to Mr. Bradley. This I continued to do as long as Mr. Bradley continued to be trustee of the estate. After he ceased to be trustee, and in the present year, Mr.

Young served me personally with a notice to quit the part of the property leased and occupied by the coal company and lying north of
129 Water street. The prices I have named in respect of the different pieces of property inquired of would be the same in the summer of 1871 as at the present time.

HENRY WINSHIP.

Sworn and subscribed to before me this 3rd day of October, 1873.

J. J. JOHNSON,
Exam'r in Chancery.

Adjourned till Monday next at 2 o'clock p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.

Present, counsel for complainants.

Defendant's counsel not present; when,

THOMAS J. MEHAFFEY, being sworn, says:

I reside in Alexandria, Va.; I am 59 years of age; I am a coal agent. I was agent for the Cumberland Coal & Iron Company, and also
130 for its successor, the Consolidation Coal Company, about nineteen or twenty years, from 1853 to 1871. From the beginning of the war up to 1871 I conducted the business in Georgetown. I am acquainted with the Bradley property which this coal company has under a lease while I was there. This property commences on——

(Mr. Jones objects to the witness stating anything connected with the lease.)

Witness, resuming, says:

The property in the possession of the company during my agency was the entire canal frontage. I should think it was one hundred and eighty feet, about two boat lengths, and including a part of Fayette street. That frontage was used for the purpose of unloading boats.

Mark Young occupied the "mill property" all the time I was there.

(Mr. Jones objects to the witness being instructed while on the stand by the production of any map.)

131 The property occupied by the company was on both sides of Water street; that on the south side ran through to the Potomac River. The company was engaged in the Cumberland coal business for shipment. We shipped it from the canal over the trestle work to the river. We got it from the canal to the river by means of railway trucks operated in the beginning by horse power and afterwards by steam power.

Q. Do you know the value of the property occupied by the company between Water street and the Potomac River detached from the canal? If so, state what it is.

A. I really could not say what the value is. I mean I could not say what it is cut off from the communication of the canal.

Q. Can you tell me the value of the property occupied by the company north and south of Water street, together with that of the mill property occupied by Mark Young?

132 (Objected to.)

A. I can't form any idea of the value of the mill property. I am not acquainted with property of that description.

Q. Can you tell me the value of the property occupied by your company north and south of Water street?

(Objected to.)

A. I should think it was worth $30,000; I mean exclusive of the mill

property. I refer to the property leased by Mr. Bradley to my company.

Q. What gives to that property its main element of value; is it or not its facility for the transhipment of coal?

(Objected to.)

A. Its facility for shipment of coal from the canal. Neither
133 piece of property is of much value without the other for the purpose of shipping coal.

Q. Did you hear of the sale made by Mr. Bradley to Mark Young of the mill property and the property adjoining on the canal and the price at which the sale was made?

(Objected to.)

A. I heard of it.

Q. When?

A. Well, a short time after the sale took place, probably a month or two.

Q. Did you then see Mr. Bradley and state to him the value of the property; and, if so, what value did you then set upon the property?

(Objected to.)

A. I did not set any particular value upon the property; I was
134 not called upon to set any value upon it.

Q. Can't you state to me what you stated to me just now as to the value?

(Objected to.)

A. I had some conversation with him about other matters before we entered upon that. My object in seeing him was to see what he would take for his portion south of Water street. I mean the portion that was left after the sale. His answer to me was, that he would neither lease nor sell at present, but, if he did sell, he would expect to get the same for that portion of the property that Mark Young asked for his canal front, exclusive of the "mill property." I told Mr. Bradley the property was worth from $40,000 to $50,000. I mean the whole
135 property, the mill and all together. But when the property was separated, one portion was valueless without the other, so far as the shipment of coal was concerned.

Q. If you had owned the property south of Water street and also other property north of Water street, connecting the property south with the canal, and been called on to m'e a sale, would you have sold one without the other?

(Objected to.)

A. No, sir.

Q. Why not?

(Objected to.)

A. Because, as I have stated before, for the shipment of coal the property separated would be valueless.

Q. Is not the main demand for property situated as this is based
136 upon its advantage in the shipment of coal?

(Objected to.)

A. Yes, sir.

Cross-examined by Mr. JONES:

The first year the company paid $600 rent. The next year we paid $1,200 for one year, with the privilege of five. We kept it these five years, and it was renewed on the same terms by the executor of Mr. Bradley for five more, and it expired, I think, in March, 1874.

Q. Then your company paid $1,200 annual rent for property that you now estimate at $30,000 or $40,000?

A. Yes, sir; that I now estimate at that sum. But the property, on first leasing it, was considered comparatively speaking worthless.

137 Q. How was it in 1869, after you had had it six years? Was it worth as much then as it is now?

A. I should suppose it was.

Q. You have stated if this property was separated, that is, north from the south parts, that neither would be valuable for the purpose of coal transhipment; are they not now separated by a public highway?

A. They are separated by Water street, but the corporation of Georgetown gave the company the privilege of carrying the trestle over Water street, thereby connecting the two parcels.

Q. What is the width of Water st.?

A. I really can't say. I suppose sixty or seventy feet.

138 Q. If your company or its successor were deprived of the privilege of crossing Water street by trestle work, would not the two separate north and south parcels be of the small value you have stated they would be separated?

A. Yes, sir.

Q. How much of the bed of Water street did the company use?

A. I really could not say.

Q. About how much? How narrow did you leave the roadway of Water street?

A. I should think it was fifty or fifty-five feet. I really could not say.

Q. Do you now, or did you ever own any property in Georgetown?

A. No, sir.

139 Q. You know Mr. Young's mill, do you not?

A. Yes, sir.

Q. Do you know how much front it has on the canal, & west of the line of Fayette street?

A. Well, the mill is five feet, I think, on Fayette street, & probably 20 feet or 25 feet frontage on the canal.

Q. What is the value of that mill property alone?

A. I don't know anything at all about it.

Q. Suppose the dimensions of the ground covered by the mill fronted about nine feet & eight inches on the canal, and 26 feet & 8 inches on Water street, the entire depth being but 51 feet & 10 inches;

140 what would you set as the value of the property?

A. I could not value the property, because I know nothing about it.

Q. Is not the mill a very old building?

A. I really do not know; it appears to be.

Q. What is the value of the piece of ground fronting nine feet and eight inches on the canal, 26 feet 8 inches on Water street, and 51 feet deep, with about one-half of the old mill building thereon, exclusive of the machinery and water power?

A. I am not sufficiently competent to place any value on it in that way.

141 Q. Mr. Mehaffy, what is the value of the entire property leased by the company for any other purpose than the transhipment of coal?

A. I cannot tell.

Q. Would it be worth $30,000?

A. I have told you I do not know.

Q. Would it be worth $5,000?
A. I cannot say.
Q. Could it be used for the transhipment of coal without the use of Fayette street and Water street?
A. It could be transhipped without the use of Fayette street, but not to such a large amount. It could not be used without the trestle-work passing over Water street.

142 Q. Was not the company obliged to use both Fayette and Water streets in the prosecution of their business?
A. Yes, sir.
Q. When did you hear of the sale by Bradley to Young?
A. About a month or two I should suppose after it took place.
Q. When did it take place?
A. I think it took place in the spring of 1871.
Q. Did you hear the price?
A. I think I did.
Q. How much was it?
A. About $14,000.

Q. Did you hear how much was sold, and what was sold?
143 A. Yes, I heard whole the canal frontage was sold, extending back to Water street.
Q. Did you hear it from Mr. A. Thomas Bradley, the executor?
A. No, sir; I heard it as a report flying around.
Q. You say you went to see him to see what he would take for the remainder. Did you tell him what the remainder was, or did he tell you what the remainder was?
A. I forget now.
Q. Think.
A. Mr. Bradley told me what was left.
Q. What did he say it was?
A. The whole of the property south of Water street.

144 THOS. J. MEHAFFEY.

Sworn and subscribed to before me this 6th day of October, 1873.

J. J. JOHNSON,
Exam'r in Chancery.

Adjourned till the 8th inst. at 2 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.
Present, counsel on either side; when no witness being present, examination was adjourned till Saturday at 2 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above.
Present, counsel on either side, and by consent adjourned till Tuesday the 14th of October, 1873, at 2 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

145 Met pursuant to above, and adjourned till Wednesday next at 2 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above, and, at request of counsel for complainants, adjourned till Wednesday the 22nd Oct., 1873.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above and, at request of Mr. Davidge, complainant's solicitor, the examination was further postponed till Wednesday the 29th inst. at 2. p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to adjournment, and at the request of counsel for complainants adjourned.

J. J. JOHNSON, *Exam'r.*

MARCH 7TH, 1874.

Met at request of complainant's solicitor and adjourned.

J. J. JOHNSON,
Exam'r in Chancery.

146 JULY 23RD, 1874.

Met pursuant to notice hereto attached.
Present, counsel on either side; when—

WILLIAM H. TENNEY, being sworn, says:

I reside in Georgetown. I have been for the past four years a manufacturer of flour; I had carried on business for that time on Water street, between Fayette and Lingen streets, Georgetown, on the same block with Mr. Young's mill.

My property adjoins the property which was understood was bought by Mr. Young from Mr. Bradley, the trustee. We adjoin on the west. I am acquainted by eyesight and passing it every day with the property bought by Mr. Young. I do not know the measurements.

I remember particularly, about the time that the Young purchase from Mr. Bradley of the mill property, putting a valuation upon it. This was in conversation with my son. The valuation I put upon the prop-
147 erty was $30,000. The property I supposed to have been bought by him was all the property lying east of my mill and running to Fayette street and running from Water street north to the canal property with the right of the canal front, together with the right of water.

In making this estimate I supposed there was sufficient water to run the mill as a corn-meal mill under the original lease, and at the rate of three dollars per square inch. I did not know the number of inches of water at the time, but I supposed there was water enough under the original lease to run the mill.

Q. Look at the plat now shown you of the Young premises. You will see that a portion of the mill is built upon Fayette st. What effect would that have upon your valuation of the said premises?

148 A. As far as the occupancy of the street is concerned, none whatever; but, unless I could have an undisputed title, that portion of the building being on Fayette street, it would effect my valuation equal to the cost of purchasing that portion of the building on Fayette street.

Q. Then you would not attach any importance to the fact that a portion of the building was erected on Fayette street?

(Objected to.)

A. No, other than that I take it for granted that you could not give me a deed covering that portion on Fayette street.

Q. At the time Young bought were you a lessee of any portion of the premises; and if so, what?

Q. Would it be worth $5,000?
A. I cannot say.
Q. Could it be used for the transhipment of coal without the use of Fayette street and Water street?
A. It could be transhipped without the use of Fayette street, but not to such a large amount. It could not be used without the trestle-work passing over Water street.

142 Q. Was not the company obliged to use both Fayette and Water streets in the prosecution of their business?
A. Yes, sir.
Q. When did you hear of the sale by Bradley to Young?
A. About a month or two I should suppose after it took place.
Q. When did it take place?
A. I think it took place in the spring of 1871.
Q. Did you hear the price?
A. I think I did.
Q. How much was it?
A. About $14,000.

143 Q. Did you hear how much was sold, and what was sold?
A. Yes, I heard whole the canal frontage was sold, extending back to Water street.
Q. Did you hear it from Mr. A. Thomas Bradley, the executor?
A. No, sir; I heard it as a report flying around.
Q. You say you went to see him to see what he would take for the remainder. Did you tell him what the remainder was, or did he tell you what the remainder was?
A. I forget now.
Q. Think.
A. Mr. Bradley told me what was left.
Q. What did he say it was?
A. The whole of the property south of Water street.

144 THOS. J. MEHAFFEY.

Sworn and subscribed to before me this 6th day of October, 1873.

J. J. JOHNSON,
Exam'r in Chancery.

Adjourned till the 8th inst. at 2 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above.
Present, counsel on either side; when no witness being present, examination was adjourned till Saturday at 2 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above.
Present, counsel on either side, and by consent adjourned till Tuesday the 14th of October, 1873, at 2 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

145 Met pursuant to above, and adjourned till Wednesday next at 2 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above, and, at request of counsel for complainants, adjourned till Wednesday the 22nd Oct., 1873.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above and, at request of Mr. Davidge, complainant's solicitor, the examination was further postponed till Wednesday the 29th inst. at 2. p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to adjournment, and at the request of counsel for complainants adjourned.

J. J. JOHNSON, *Exam'r.*

MARCH 7TH, 1874.

Met at request of complainant's solicitor and adjourned.

J. J. JOHNSON,
Exam'r in Chancery.

146 JULY 23RD, 1874.

Met pursuant to notice hereto attached.
Present, counsel on either side; when—

WILLIAM H. TENNEY, being sworn, says:

I reside in Georgetown. I have been for the past four years a manufacturer of flour; I had carried on business for that time on Water street, between Fayette and Lingen streets, Georgetown, on the same block with Mr. Young's mill.

My property adjoins the property which was understood was bought by Mr. Young from Mr. Bradley, the trustee. We adjoin on the west. I am acquainted by eyesight and passing it every day with the property bought by Mr. Young. I do not know the measurements.

I remember particularly, about the time that the Young purchase from Mr. Bradley of the mill property, putting a valuation upon it. This was in conversation with my son. The valuation I put upon the prop-
147 erty was $30,000. The property I supposed to have been bought by him was all the property lying east of my mill and running to Fayette street and running from Water street north to the canal property with the right of the canal front, together with the right of water.

In making this estimate I supposed there was sufficient water to run the mill as a corn-meal mill under the original lease, and at the rate of three dollars per square inch. I did not know the number of inches of water at the time, but I supposed there was water enough under the original lease to run the mill.

Q. Look at the plat now shown you of the Young premises. You will see that a portion of the mill is built upon Fayette st. What effect would that have upon your valuation of the said premises?

148 A. As far as the occupancy of the street is concerned, none whatever; but, unless I could have an undisputed title, that portion of the building being on Fayette street, it would effect my valuation equal to the cost of purchasing that portion of the building on Fayette street.

Q. Then you would not attach any importance to the fact that a portion of the building was erected on Fayette street?

(Objected to.)

A. No, other than that I take it for granted that you could not give me a deed covering that portion on Fayette street.

Q. At the time Young bought were you a lessee of any portion of the premises; and if so, what?

A. I was a lessee under the Consolidation Coal Company of the
149 1st & 2nd stories of the brick warehouse adjoining my property on the east. I mean, Tenney & Sons were the lessees. We paid as rent one hundred and fifty dollars a year.

Q. After Young bought, did you make an offer for the purchase of the brick warehouse? If so, what amount did you offer?

(Objected to.)

A. My memory is we offered $4,000 for the building with the ground it stands on, without any right to the canal front.

Q. To whom did you make this offer?

A. The offer was made by one of the firm to Mr. Mark Young, believing him to be the owner of the property, shortly after the purchase.

Q. Did he accept or decline that offer? And did he name a
150 price at which he would sell the property without the canal front?

(Objected to.)

A. He declined the offer, and named $5,000, which we refused to give, and afterwards withdrew his offer of $5,000. All this occurred before we heard of the dispute of his purchase.

Q. What is the value of the brick warehouse which you sought to buy without the ground?

(Objected to.)

A. The value to us is more than the value to any others. I don't understand the question. Am I to understand that I am to take the building off the ground?

Q. I want to ascertain to what extent the building, the brick warehouse, entered into the sum of $4,000 that you offered them for that part of the premises.

A. We offered that as a whole for the building and ground.
151 Upon being asked the question, what is the value of the building alone, it would be worth $2,000 to us.

Q. Why would it be worth more to you than any one else?

A. The two must be connected together. It would be worth nothing without the ground. The value to us is because the building and ground adjoin our mill.

Q. How long have you been carrying on business in Georgetown?

A. From the year 1836 to 1870, in the grocery business, and since then in the flour manufacturing business.

Q. Are you well acquainted with property between the canal and the Potomac River in the neighborhood of this property; and if
152 the so, for what business is such property generally used?

(Objected to.)

A. I am well acquainted with the property in the neighborhood. The property in that neighborhood is more generally used for the shipping of caol. It is also used for milling purposes.

Q. How is it used for the shipment of coal?

A. Coal is raised from the boats on the canal by either steam or water power and carried across Water street in cars over railways supported by trestle-work, and dumped from the cars into vessels or on the wharfs.

Q. Then to carry on the shipment of coal it is necessary to own or control property between the canal and the Potomac River, and on both sides of Water street, is it not?

(Objected to.)

153 A. Yes.

Q. Do you know the wharf property owned by the Bradley estate, and south of the property purchased by Mark Young?

A. I know the property without knowing the number of feet.

Q. What was the effect upon the value of the wharf property of the sale to Young of the property north of Water street? What was the effect upon the wharf property of cutting off from connection with the canal?

A. The wharf property and the canal property ought to be sold together. Their value is mutually dependent on each other. I really don't know how to answer the balance. I will put the answer in this form. If the property was in another part of the town not accessible to the canal, the value of the wharf property would be from $20 to $30 per front foot. I think I ought to correct that by putting it from $30 to $40.

154

Q. Can you give me any idea as to how far the value of the wharf property in question was injured by the sale to Young, whereby it was cut off from communication with the canal?

(Objected to.)

A. As I have already answered, they mutually depended on each other. If I were the owner of the property bought by Mr. Young, I would give more for the wharf property than I would give otherwise. Without the right of that property this wharf property would be of the same value as other wharf locations.

Q. Would it continue, however, to have any value for the purposes of the coal business?

(Objected to.)

A. I understand that question to mean to refer to its present location. The owners on the canal and the owners on the river would have to come to a mutual agreement to make either of the property very valuable.

155

Q. Do you know of any other business done at that wharf property except the shipment of coal?

(Objected to.)

A. Since I have been in the milling business it has been used only for the shipment of coal—the wharf property—and for some considerable period previous; how long I cannot say.

Cross-examined:

Q. Your place of business, Mr. Tenney, is immediately west of this property. State its dimensions and character where you purchased.

Adjourned till the 25th inst., at 11 o'clock a. m.

J. J. JOHNSON, *Exam'r*

156

Met pursuant to above.

Present, counsel on either side; when the cross-examination was resumed, as follows:

Q. Mr. Tenney, you have stated that if this property was separated, that is, the south from the north part, its value would be impaired for the purpose of coal shipment. Are not those two parcels now separated by a public highway?

A. I have stated that the property—canal and river—are mutually dependent on each other. Now I state, in answer to the last clause of the question, that while these properties are separated by a public highway, the late corporation of Georgetown gave permission to connect them by a trestle-work, which work is still standing, or the most of it.

157

Q. What is the name of the public highway, and the width of it, that separates the two properties—the canal property from the river property?

A. The name of the highway is Water street; the width, I presume, is sixty feet.

Q. Do you state from positive knowledge that the corporation of Georgetown by any published ordinance ever attempted to grant the use of Water street to any person or corporation; if so to whom?

A. As a member of the corporation I have voted—I remember it distinctly that ordinances have passed allowing the right of way across Water street for the transportation of coal over bridges, which bridges were not to obstruct the travel on Water street. To the best of my knowledge no property-holders within the limits of these coal companies, which extends from about Potomac street, on Water street,
158 to near the Alexandria aqueduct bridge, 'as ever objected to these trestle-bridges; certainly not myself, as a property-holder within those limits.

Q. But you have been a property-holder there only within the past four years?

A. Four years the first of July inst.

Q. And you never heard of the case of Welch and Herr against the coal company occupying and using this identical Bradley property?

A. The trestle-work bridge connecting the Bradley property is all on the Bradley property. I have never heard of the suit just named, to the best of my memory, till the present time. I have heard it reported that Herr and Welch, or their predecessors in the property of the Columbian Mills, objected to a trestle-work bridge on Fayette street
159 adjoining their mills, to be used for the purposes of transporting coal.

Q. Look at this plat, and do you now wish to correct your previous answer, in which you say the trestle-work is all on the Bradley property?

A. In examining the plat I find that there is one trestle-work on the Bradley property, and one on Fayette street, and crossing Water street

Q. What proportion of the trestle-work is on the Bradley property north of Water street; what proportion on Fayette street, and what proportion on Water street, all north of the south side of Water street? Approximate the same as near as you can.

A. There is a difference in length between the two trestle-works; the width is the same according to the plat. The difference I find from the plat is about 25 feet longer on Fayette street between the north
160 line of Water street and the canal than the trestle-work on the Bradley property in the same limits.

Q. What is the exact length of the trestle-work on the so-called Bradley property north of Water street?

A. I can only answer you by the plat. By the plat it is thirty-six feet three-tenths.

Q. What is the length of the trestle-work on Fayette street north of Water street?

A. It is marked on the plat $61\frac{75}{100}$ feet.

Q. That is also a double track?

A. I think they are double tracks, to the best of my knowledge.

Q. Then both the tracks cross Water street from its north to its south side?

A. Yes, sir.

161 Q. And Fayette street has been used for the transhipment of coal quite as much as the trestle-work on the property itself on the north side of Water street, the facilities being the same?

A. I presume so.

Q. Now, Mr. Tenney, if the privilege of using Water street and Fayette street should be prohibited, or the use of those streets not obtainable, how would it effect the value of the property as a coal transhipping depot?

A. I have carefully considered my valuation of the property in dispute between the heirs of the Bradley estate and Mark Young, and have heard that part of the mill is on Fayette street, with the number of inches of the original lease from the canal company for water to be 125 inches. I still value the above property at $30,000, considering
162 the mill with the corn-crib attached to it, with the brick warehouse adjoining my mill as worth $20,000, allowing the valuation of the front of the canal at $10,000, with the right of way between the warehouse and the mill. If you take away the connection between that and the river—if that is forbidden—then the valuation would only be the ground between the warehouse and the mill.

Q. What would be the value of the ground on those conditions?

A. It would be about $2,500 to $3-000, with the additional value of having the canal front.

Q. What land do you say would be worth $3,000?

A. I said $2,500 to $3,000, with the canal front.

163 Q. What property do you mean? Give the dimensions from the plat.

A. The plat says 37 feet 9 on Water street, and 41 feet 8 on the canal.

Q. How is it bounded on the east and west?

A. It is bounded on the east by the corn barn, and on the west by the brick warehouse.

Q. Then you say the vacant lot fronting 37 feet nine inches on Water street is worth from $2,500 to $3,000, while you only offered $4,000 for the property 39 feet 9 inches on Water street, and 46 feet on the canal, improved by a large four-story brick warehouse adjoining it? Please explain this.

A. In questions asked me I valued the old brick warehouse at $2,000; the ground at $2,000, making $4,000; this without any canal
164 front. This other valuation, while it includes a less amount of ground, it includes the whole canal front and the property in dispute.

Q. You state as a fact that this middle piece of ground includes the entire canal front; where do you get your information, and what is the number of feet of the canal front?

A. The canal front is about 125 feet; the middle piece of ground does not include any canal front, unless so sold. My estimate was $20,000 for the brick warehouse and the mill & corn-crib, without any canal front; consequently you have the vacant ground and the canal front for sale.

165 Q. What would the value of this middle piece of ground be with just its own canal front, and separated from all connection with the wharf by Water street?

A. I should estimate it from $2,500 to $3,000.

Q. And you estimate its value with the entire canal front of 125 feet at $2,500 to $3,000, do you?

A. That is my estimate; I will give an explanation as to one single matter. In estimating the value of the mill and warehouse, it includes the right of way for a race from the property to the canal.

Q. You estimate the ground with the brick warehouse at $2,000; you

estimate the ground east of it, not so large, at from $2,000 to $2,500; please explain this.

166 A. The difference in the size of the ground is not so great. The explanation is already made; the one was without the canal front and the other with it. The one with the warehouse on it being estimated without the canal front, the other with it.

Q. Who made the offer to buy the brick warehouse from Mr. Young—which member of your firm?

A. The offer was authorized by me, the senior member of the firm, and reported to me as made by John Tenney, a junior member of the firm of W. H. Tenney & Sons.

Q. Was it in writing?

A. No.

Q. How long ago was it?

A. Very soon after the reported purchase by Young.

Q. You know nothing of the offer to purchase, except what your son told you, to Mr. Young?

167 A. I will give the same offer to-day, but I do not know of the offer personally, only as reported to me by my son.

(Question repeated.)

A. That is all.

Q. Who built the frame house or corn barn, colomed yellow on the map?

A. I do not know.

Q. Do you know when it was built?

A. I do not; my memory is not as good as it used to be when I was younger. Things that don't concern me I don't so much notice.

Q. What would the value of so much of the corn mill now occupied by Mr. Young, assuming that it had only 25 feet front on Water street, and 8 feet and 6 inches on the canal, with a depth of only 54 feet 2 inches between Water street and the canal; in short, the property colored red and lying West of Fayette st., between Fayette and the

168 part colored yellow on the plat, and excluding the part colored red, lying in Fayette street?

A. Is it understood that I am to separate this question from all connecting circumstances with which I am familiar?

Mr. Jones then put the following:

Q. I want to know the value of the property described by me in the preceding question. If you don't understand the question please say so.

A. I understand the question. The value of the water right I estimate at $5,000; the value of the brick house, mill and frame house, corn barn, would be $11,000; now, if in answer to the question I would say, if one was compelled to buy the piece of property specified in the question, and could buy no adjoining property, that would depreciate the brick mill property very much; still I adhere to my original estimate.

169 Q. What would be the value of that part of the mill property 25 feet on Water street, 8 feet 6 inches on the canal, to the depth of 51 feet, isolated from all water right and all fanciful or substantial rights?

A. This question is to be answered abstractly. It would be hard to estimate the value, knowing that a street adjoins this property on the east, and believing that no objection would be made to the using of a portion of that street; with that belief, the value might be from $5,000 to $6,000 & $7,000. It is a very hard matter to separate these things, but with a positive knowledge that you had to take off that portion of

the mill being on Fayette street, and could not buy on reasonable terms sufficient property west of it, without water rights the value would be probably not over $1,000.

(Question repeated.)

170 A. The answer already given, not over $1,000.

Q. But I want all fanciful speculations as to whether you could get land on either side of it or whether there was a street on either side of it excluded.

A. I have already answered the question; not over $1,000.

Q. How tall is this mill?

A. I have never measured it.

Q. How many stories has it?

A. Although I pass the mill every day I cannot answer positively. My own mill, which is on the same level with the canal, is three stories. I enter my own mill on the tow-path, which is the third story, and could enter Mr. Young's mill at a door on the same tow-path.

171 Q. You have estimated the value of the four-story brick warehouse, nearly 40 feet front on Water street and 46 feet front on the canal, at $4,000. The mill according to this plat is only 38 or 39 feet on the canal, and 38 feet 8 inches on Water street, and that you put at $11,000, without any canal front. Please explain this.

A. My estimate of $11,000 includes the ground, the mill, and the corn-barn, and the machinery in the mill.

Q. And you also included the ground on Fayette street occupied by the mill?

A. In my estimate I take the property as it now stands. I think any buyer would take the chances on the safety of the property on the ground of the District of Columbia being useless portion of Fayette street on which a portion of the mill stands.

172 Q. Then you regard Fayette street as the property of the District of Columbia?

A. I am not competent to give a legal opinion, but I am willing to think anybody can see what I mean when I call it the property of the District of Columbia as the successor of the corporation of Georgetown.

Q. Then what do you mean?

A. Mean about what?

By Mr. JONES:

When you call it the property of the District of Columbia?

A. I mean that property called Fayette street, lying between what is commonly known as Welch mill and Mark Young's mill.

Q. In one of your answers you say that any buyer would take the chances on the safety of the property on the ground of the Dis-

173 trict of Columbia being useless portion of Fayette street on which a portion of the mill stands. Please explain this.

A. I have the reputation in Georgetown of being a man of good common sense, and I believe it partially extends to Washington. My own judgment would take the chances if I were the purchaser of the Bradley property; as face answers to face in the glass, so does the heart of man to man. Therefore I think other people of good sense would take the same view of it.

(Question repeated.)

A. I have given the answer; if it is not satisfactory I will try to explain it further. Now I will add to that answer this property being already built on this street, the probabilities are that the portion built on

would never be interfered with by the District of Columbia, the public, or any person or persons whatsoever.

174 Q. Do you think that any person could interfere and require that both Fayette and Water streets should be unobstructed by trestle-work or any other work impeding its use by the public?

(Objected to.)

A. I consider the question a legal one, and I am not competent——

Q. But if the uninterrupted use of both Water & Fayette streets is insisted upon by any person, to whomsoever would the Bradley property, as you call it, including both that on the north side as well as on the south side of the street, be valuable as a place of coal transhipment?

A. That portion of Fayette street, I unhesitatingly say, is entirely useless to the public; I mean the property between the two mills. If the property owners on Water street could so far stultify themselves & could forbid the use of these streets, about which I express no opinion, and injure the business of the town, then the value of the so called Bradley property would not be so valuable.

175

Q. Is it your opinion that no person but a property holder on Water street could require the street to be unobstructed?

A. That is a legal question. As I am a property holder on Water street to the value of $30,000, of the extreme west property of these coal companies, I certainly have no objection to the use of Water street so you leave me a free passage to my mill.

(Question repeated.)

A. I answer that is a legal question. As I have above stated, the question is a legal one, and I am not competent to answer it.

Q. Then you don't know what your opinion is?

A. I am a man of very decided opinions; but when a legal question is asked me I think it wiser not to give an answer.

176

Q. As you are a man of very decided opinions, is it your opinion that no person but a property holder on Water street could require Water street to be unobstructed?

A. I have declined to answer the question because it is a legal question.

Q. Then you have no opinion on this subject?

A. I have an opinion. I reflect and think upon all subjects that are brought before me.

Q. What is your opinion, then, as to the power of anybody not a property holder on Water street to require its use to be unobstructed?

A. I do not consider its use obstructed by these trestle bridges crossing Water street.

(Question repeated.)

177 Adjourned till the 29th inst. at 11 o'clock a. m.

J. J. JOHNSON,
Exam'r.

Met pursuant to the above.

Present, counsel on either side, when the cross-examination was resumed as follows:

In answer to the above question:

A. I have answered that question by stating that the use is not obstructed by this trestle bridge. I will further answer that the corporation of Georgetown then in power, as I have been credibly informed, gave permission to build these bridges. While I am not competent to express a legal opinion, my equitable opinion is, that nobody has the power to have them removed unless they impede the travel on the

street, which I do not think they do. They are much less of an obstruction than the street railway; and citizens should put up with some little inconvenience for the public good.

178 Q. Is that the only answer you can make to the question? Can you not answer it direct?

A. There are questions that require explations. This I consider in giving an answer.

Q. Then you think when you are asked your opinion that you can't give an answer directly?

A. I can answer many questions directly. If the question means an obstruction that would seriously incommode the travel on this street, my answer would be directly, any citizen having occasion to use the street would have a right to complain to the proper authorities for redress.

Q. But the question does not refer to the character of the obstruction at all. It asks what your opinion is as to the power of any person not a property holder on Water street to require Water street to be unobstructed?

A. Any person means any body in this world, and there are persons in this world certainly have no such right.

179 Q. What persons do you intend that have not the right?

A. Among them the Czar of Russia and Khan of Tartary, and many others.

Q. Do you include in this class any citizen of the Dist. of Columbia?

A. I have already expressed my opinion on that subject.

Q. When?

A. In my previous answer to-day.

Q. You have not been asked this question before; I now ask you whether any citizen of Georgetown or the District of Columbia would, in your opinion, have a right to require that Water street should be unobstructed?

A. The term nobody, in my previous answer to a similar ques-
180 tion, certainly includes the citizens of Georgetown, and answers the present question in my opinion.

Q. But if the term nobody cannot be found in any of your previous answers, what do you mean?

A. But the testimony has just been re-read in my hearing and the term is there. Therefore I consider the question an obstruction.

Q. And you are just as sure that the term "nobody" does occur as you are about everything to which you have testified?

A. I heard it read in our mutual presence. If I heard incorrectly I should be glad to be informed.

Q. Mr. Tenney, when did you first hear of this sale to Young?

A. If I had the date of the sale I could more definitely fix the
181 time. I presume that it was immediately after the sale that I heard it; probably within a week or two. In this I may be mistaken.

Q. From whom did you hear it?

A. I think from my sons, either Robert or John. In memory one cannot be positive.

Q. What did you hear that had been sold?

A. What is generally known as the Bradley estate, supposed to be what is generally called Mark Young's mill, including the mill occupied by W. H. Tenney & Sons, and not including the property on the other side of Water street.

Q. What is the other side?

A. The south or river side of Water street.

182 Q. To whom did you pay rent for the brick warehouse at the time of the sale to Young?

A. We have paid rent, and about that time we were tenants, at that time sub-tenants of the Consolidation Coal Company, Henry C. Windship, agent.

Q. Up to what time did you continue to pay them rent?

A. We consider that we are indebted to them till the 1st of March, 1874. I believe it has never been settled. I mean our accounts are not closed.

Q. Why did you stop paying them rent at that time, say March, 1874?

A. We understood their lease expired and that they turned the property over to Reginald Fendall, attorney, to whom we now consider ourselves as tenants.

Q. When did you first consider yourselves his tenants?

A. From the 1st of March, 1874.

Q. That is when the time commences. When did you first agree to recognize Mr. Fendall and to pay him rent?

183 A. Not having my books before me, I cannot name the day; but the first week in April or March, I think.

Q. Did you ever agree to pay Mr. Young the rent for the brick warehouse to commence from the 1st of March, 1874?

A. Not that I remember.

Q Did either of your firm in behalf of your firm agree to so pay him?

A. Not that I know of.

Q. When did you make Mr. Fendall the first payment on account of rent since the 1st of March, 1874?

A. Not having my receipts with me I cannot give the exact day.

Q. Give it as near as you can recollect.

A. I think the 1st week in April, 1874.

Q. Then you pay by the month?

A. Yes, sir.

Q. How much per month?

A. Twelve dollars and fifty cents.

Q. For how much of the warehouse do you pay that rent?

184 A. The first and second stories. They front on Water street. The third story fronts on a level with the tow-path.

Q. From whom did you understand that the coal company's lease expired and the property was turned over to Reginald Fendall as you have stated?

A. I understood from Mr. Henry C. Windship, agent for the company, when the lease expired, and I think from him that he should turn it over to the party disputing Mr. Young's purchase from the Bradley estate.

Q. Did you see Mr. Fendall himself in this connection?

A. Mr. Fendall, in company with another gentleman, whose name I do not remember now, called on our firm and claimed the right to the rent, which we recognized.

Q. About what time was that?

A. Early in March 1874, as well as my memory serves. It may have been the latter part of February.

Q. What arrangement have you with Mr. Fendall in respect to the occupation of this property?

185 A. The usual arrangement of tenants. We pay our rent and occupy the property.

Q. Any guaranty or indemnity of the possession of it?

A. No, sir; we asked it, but it was refused.

Q. Why did you ask it?

A. As prudent men, the property being in dispute, we would have preferred to have had it.

Q. But you did not get it, and took the property without having it. Is the rent you now pay less than that you paid before March, 1874?

A. We did not get it, as I have previously answered. We continued in the property, never having given it up, and are paying the same rent we paid before.

Q. How much rent per month did Mr. Fendall first demand of you?

A. He enquired the rent we were paying, and first and last demanded the same rent that we had been paying.

Q. Did you ever talk with a Thomas Bradley about this sale to Young?

186 A. No, sir. My son had a conversation, I think, with Mr. Joseph Bradley.

W. F. TENNEY.

Sworn and subscribed to before me this 29th day of July, 1874.

J. J. JOHNSON,
Exam'r.

Adjourned till Friday next at 2 o'clock p. m.

J. J. JOHNSON.

Met pursuant to above.

Present, counsel on either side, when—

JAMES L. DAVIS, being duly sworn, says:

I reside in Washington County, District of Columbia, and have been for 17 years. I have been in the real estate business for the last four years; I carry on business No. 51 Congress street, Georgetown. I will be 49 years of age next October.

Q. State if you please if you are acquainted with the property in controversy in this suit.

A. What property is that?

Q. I refer to the property in Georgetown the north side of Water
187 street, on the west side of Fayette street, on the east side of Tenney's mill, and south of the canal bank.

A. I have a slight knowledge of that property. I suppose it is the property now occupied by Mark Young; if that is the fact I know something of it.

Q. State if you please if you ever have had any transactions in your capacity as real estate agent in respect to this property, and if you have, state fully the circumstances.

A. It has been so long since it came before me, I can hardly give a correct statement. Mr. Tenney approached me in the matter of purchase of the whole or a part of that property. The time of that I cannot state; it has been several years ago. He asked me——

(Mr. Jones objects to any statements made by Mr. Tenney.)

Witness resuming says:

He asked me to see Mr. Young and know what he would take for a portion or the whole of the property. I saw Mr. Young and to the best of my recollection——

188 (Mr. Jones objects to what Mr. Young stated.)

Witness resuming says:

He gave me his figures as follows: $20,000 for a portion of the property without the mill; $30,000 with the mill; $35,000 or $40,000 for the whole property with the water right. I may be mistaken in this; it has been so long, and the difference between the price asked and what I was authorized to give was so great that I abandoned it from my mind.

Q. State if you please as near as you can when this took place.

A. I think it was in the fall or winter of 1872, or spring of 1873; I think it must have been further back than that.

Q. Did you communicate to Mr. Young in person or in writing?

A. In person.

Q. Have you ever had any other business in reference to this same property?

A. With Mr. Young?

Q. Yes, sir.

A. No, sir.

189 Cross-examined:

Q. How much did Mr. Tenney authorize you to give for the property?

A. I could not say positively; I think from $10,000 to $20,000 less than Mr. Young asked.

Q. What property was it Mr. Tenney wished to buy?

A. He wanted to purchase the property owned by Mark Young or a portion of it. He either wanted the portion west of the mill, and I think including some wharf property bordering on the Potomac River. I think Mr. Tenney wanted to establish a coal yard.

Q. Did Mr. Young state to you that he had purchased 250 inches more of water from Mr. Dodge, and was that included in Mr. Young's asking price?

A. To the best of my recollection it was.

Q. Did he say how much the water cost him, or did he say it cost him a great deal?

190 A. I have no recollection upon that point: I cannot say.

Q. Then it was for the whole property, the mills, vacant property, the water right, and the wharf property for the purposes of a coal yard that Mr. Tenney authorized you to offer within $10,000 to $20,000 less than Mr. Young asked?

A. Yes, sir.

Redirect:

Q. Are you positive in your recollection that the wharf property referred to w. s the wharf property on the Potomac, or was it the wharf property on the canal?

(Objected to because gone over.)

A. It is my impression that it was for both.

Q. Are you positive in your recollection?

(Objected to.)

A. I am not, sir; I cannot be positive in anything; it is too far gone.

Recross:

Q. Could he have a coal yard without both?

191 A. He certainly would have to have both to make a coal yard; whether it would be on that property is another thing.

JAS. L. DAVIS.

Sworn and subscribed to before me this 31st of July, 1874.

J. J. JOHNSON,
Exam'r.

JOHN TENNEY, being sworn, says:

I live in Georgetown; I am between 22 & 23 years of age; I am of the firm of William H. Tenney & Sons, and have been for a little over four years. Our place of business during that time has been on Water street next West, excluding the warehouse of Mark Young's mill.

Q. Are you acquainted with the property in controversy?

A. If it refers to the property between Welch's mill and ours, I am.

Q. Do you know from whom Mark Young bought this property?

192 A. I understood from Thomas Bradley, as trustee.

Q. When was this?

A. As near as I recollect, it was about the fall or winter of 1872.

Q. What do you consider this property worth?

(Objected to.)

A. Well, I should say about $30,000.

Q. Has this property any peculiar value as a coal transhipment depot?

(Objected to.)

A. It has.

Q. Does its value in this respect depend upon its connection with the property immediately south and opposite Water street?

(Objected to.)

A. To a great extent; that is, the wharf property of the canal front.

Q. Independent of its connection with the property south of Water street, what do you consider the property worth?

(Objected to.)

193 A. If I understand that the property south of Water street could not be rented or purchased, at a fair valuation about $20,000.

Q. Does this estimate include the water right?

(Objected to.)

A. This estimate includes the water right of 150 inches of water, as I understand.

Q. At the time of Young's purchase, were you or was your firm a lessee of any portion of this property?

A. Our firm was.

Q. Of what portion?

A. The first and second floors of the warehouse, between our mill and Mark Young's mill.

Q. After Young bought, did your firm make any offer for the purchase of this warehouse; and if so, what amount did you offer?

(Objected to.)

A. I offered casually to Mr. Young $3,500, which he refused, and the next day, or a day or two afterwards, I called at his office and offered $4,000, which he refused. I then asked him what he would take; he answered $5,000.

Q. Do I understand that this offer was for the warehouse simply?

(Objected to.)

A. It was for the warehouse, exclusive of the canal front.

194 Q. Was any one present when this conversation took place?

A. I think not.

Q. What is the value of this warehouse without the grounds?

A. Do you mean the warehouse as it stands, or to remove it?

Q. I want you to give the value of the warehouse and the property on which it stands, separately, but as the property now stands.

A. Do you mean without the canal front?

Q. Yes, sir.

WITNESS. The ground at from $2,000 to $2,500; the building the same.

Q. Is the offer about which you have testified the only one which you ever made to Mr. Young, either directly or indirectly?

A. I think it is; I authorized a party to negotiate for me, but he made no direct offer.

Q. Was this for the whole property north of Water street, or simply the warehouse?

(Objected to.)

A. It was for the warehouse and the whole property.

195 Q. What was the result of that negotiation?

A. Mr. James L. Davis, the party whom I authorized, reported to me Mr. Young had asked him——

(Mr. Jones objects to any statements of Mr. Davis and Mr. Young.)

Witness resuming says:

$40,000 for the property—the whole property—$30,000 for the property excluding the water privileges, and $20,000 without the mill.

Q. What do you mean when you say the whole property?

(Objected to.)

A. I mean the property between Tenney's mill and Fayette street, north of Water street, and south of the canal.

Q. Is this the full answer to my question?

(Objected to.)

A. Which question?

Q. What was the result of that negotiation?

A. As stated above, with the addition that it was above my idea, and we dropped it.

196 Q. Do you know the wharf property owned by the Bradley estate, and south of the property purchased by Mark Young?

A. I do.

Q. What was the effect upon the value of the wharf property of the sale to Young of the property north of Water street?

(Objected to.)

A. The sale effected it in no more than the wharf property on the canal was effected.

Q. What would be the effect upon the wharf property of cutting it off from the connection with the canal?

A. They both, to a great extent, dependent on the other. If either of them could be to the other nothing.

Q. If the property north of Water st. were cut off in its connection with that south of Water street, would either of them have any value whatever for the purposes of the coal business?

(Objected to.)

A. That north of Water street would; if it was cut off, so that you could not cross Water st., it would not.

197 What would be its value as compared with its value with the connection across Water street?

A. That means that objections would be sustained to crossing the street; in that event about $10,000.

Q. Do you know of any other business done at that wharf property except the transhipment of coal?

(Objected to.)

A. Yes, sir; the milling business.

Q. I refer to the wharf property south of Water street.

A. I think it would be of very little value, and could not be used for a coal shipping depot.

Adjourned till Wednesday, the 5th of August, 1874.

J. J. JOHNSON,
Ex'am'r.

Met pursuant to above.

Present, counsel for the plaintiff. No one for defendant.

Adjourned till to-morrow, the 6th inst., 2 o'clock p. m.

J. J. JOHNSON,
Exam'r.

Met pursuant to above.

Present counsel on either side, when—

198 WILLIAM H. TENNEY was recalled and testified as follows:

Q. You have in your testimony mentioned an offer made by you or your friend to Mark Young for the purchase of the warehouse, part of the property conveyed by Bradley as trustee to Young; have you any recollection of an offer made by either yourself or your firm, through James L. Davis, for the purchase of all the property now in controversy, lying between Water street and the canal, or any portion of such property? If you please, state your recollection fully, giving the directions to Davis and the particulars of his report.

(Mr. Jones objects to any statement made by Mr. Davis to Mr. Young, or by Mr. Tenney to Mr. Davis, unless Mr. Young was present.)

A. My answer is this: In my previous testimony I had forgotten that my son John was authorized by myself to employ James L.

199 Davis to see Mark Young, and to see upon what terms or what price we could buy the property of him, bought by him, as we supposed, of the Bradley estate. A few days ago, in talking of this case, my son John recalled to my memory——

(Mr. Jones objects to anything his son John said.)

Witness, resuming, says:

Of our having employed Mr. Davis for this purpose, and his memory of Mr. Davis' answer or report to him corresponds with what he told me at the time. But as I did not see Mr. Davis myself, and the whole transaction was made by John Tenney, if the history of that negotiation is necessary, I think that John Tenney is the party who ought to give it and not myself, as I can only repeat what my son told me, my memory being refreshed by his late conversation.

Q. Can you state the terms upon which the property was offered

200 for sale by Young, as stated to you by your son John at the time of the negotiation?

(Objected to.)

A. My memory is that John told me that Mr. Davis reported that Mr. Young asked him $30,000 for his Bradley purchase. My son now says that that did not include the water right, which I value at $5,000, but about this my memory is at fault whether it did or did not include the water right of the mill. I refer to the old water-lease from the canal company to the mill.

Cross-examined:

Q. Mr. Tenney, you know nothing of the transactions or statements

that took place between Mr. Young & Mr. Davis, except as from your son John's telling you that Mr. Davis said so and so to him, John?

A. I know nothing but what my son told me in the matter, never having seen either Mr. Young or Mr. Davis in the matter.

Q. Mr. Tenney, how much did you authorize your son or Mr.
201 Davis to give Mr. Young for the property or any part thereof except the brick warehouse?

A. I do not remember that we named any price that we would give for the property, but employed Mr. Davis, he not to say who wished to purchase, what the property could be bought for. If we found it could be bought at a price that would suit us, we would then have employed him as an agent to make the purchase.

Q. Was the price, as reported to you, too much for the property, or why did you decline to take it?

A. The price reported, my own impression at the time was, was its full value, and we did not wish to purchase unless we could buy at something under its full value.

Q. When did this fruitless negotiation occur?

A. Shortly after the reported purchase by Mark Young of the Bradley heirs.

Q. Name the year and month as near as you can.

202 A. I say within one or two months after the reported purchase. I can't tell the month or year unless I know the date of the purchase.

Q. You had forgotten this transaction when you testified before, and in answer to one of my questions you stated that you did not know who built that corn barn now on the premises. Has your memory since been refreshed so that you can now answer who built the corn barn & when?

A. It had passed from my memory, as many things do until they are recalled either by an association of ideas or the mention by others, the negotiation made by Mr. Davis, but immediately it was mentioned to me my memory recalled it distinctly, the transaction mentioned. After the reported purchase of this property by Mr. Young, I remember very well of his putting a new front brick wall to the corn-meal mill making the western stone wall—partial wall. And I think on
203 the corn-crib was a gravel roof, which I am now told and believe is a tin roof, yet my memory is still at fault whether he added to or rebuilt the wood part of the corn-crib. My memory being, whether right or wrong, that there was a corn-crib there before the reported purchase.

Q. How came you to be recalled to-day?

A. I received a regular summons requiring me to be here yesterday, and since verbally informed as I could not be here yesterday to come to-day.

Q. Then you have been summoned to appear and testify twice in this cause?

A. Yes, sir; two subpœnas.

W. H. TENNEY.

Sworn and subscribed to before me this 6th of August, 1874.

J. J. JOHNSON,
Exam'r.

Adjourned till 2 p. m. to-morrow.

J. J. JOHNSON,
Exam'r.

204 Met pursuant to above.
Present, counsel on either side, when —

JOHN TENNEY was cross-examined as follows:

Q. State from whom you first heard of Mark Young's purchase of the Bradley property.

A. I heard it first on the street. I don't remember from whom. I then met Mr. Young, and asked him whether he had purchased the property at the price stated, $13,000 and some odd; he told me he had. I remarked I would like to give him $20,000 for it. He answered, probably several others would too.

Q. Were you 21 years of age at that time?

A. I don't think I was.

Q. What property did you understand had been purchased by Mr. Young?

A. The property north of Water street, south of the canal, between Fayette street and Tenney's mills.

Q. Did you ever have any conversation with A. Thomas Brad-
205 ley as to the property sold by him to Mr. Young?
(Hensey objected.)

A. I think I did about three or four years ago, before the sale.

(Question repeated.)

A. Not since the sale.

Q. How is the property sold to Mr. Young separated from the property fronting on the Potomac?

A. By Water street.

Q. Is that a public highway, and what is its width?

A. It is a public highway; its width I cannot give accurately; I can guess at it, say about 80 feet, may be more.

Q. How much were you authorized by your father or your firm to offer to Mr. Young for the property, and how much did you authorize Mr. Davis to offer?

A. I think and had decided as a limit $25,000, on certain contingencies; Mr. Davis had only authority to get Mr. Young's lowest price, although I told him my ideas about the price.

206 Q. Do you say positively that you did not authorize Mr. Davis to offer $15,000 for the property?

A. Most emphatically I think. I told him my idea of what I would give was from $20,000 to $25,000.

Q. You think that the property bought by Mr. Young if denied all access to the portion south of Water street would be worth $10,000; please give the details of each piece of property making up the $10,000.

A. I never said that.

Q. What do you mean by your last answer on the 86 page?

A. It refers to the property south of Water street.

Q. Do you mean, then, that property south of Water street would be worth $10,000, cut off from access to the canal by Water street being kept unobstructed?

A. In reading the question & answer at the bottom of the 86th page again I see that my answer refers to the depreciation of the prop-
207 erty north of the canal to the extent of $10,000, if they should be prevented from crossing Water street.

Q. Then, you say that property north of Water street would be worth but $10,000 if cut off from access to the wharf?

A. No, sir; I say it would be depreciated $10,000.

Q. What property was it in your answer at the foot of the 86th page

would be worth $10,000 if cut off by objections being sustained to crossing Water street?

A. The question was, what would be its value as compared with its value with the connection across Water street? My answer was that means, that objections would be sustained to crossing the street, in that event about $10,000—meaning $10,000 less on account of not crossing the street.

Q. To which property did you refer?

A. To the property north of Water street, south of the canal, between Fayette street and Tenney's mill.

208 Q. You were asked if the property north of Water street was cut off in its connection with that south of Water street, would either of them have any value whatever for the purposes of the coal business, and you answered that north of Water street would, but if it was cut off so that you could not cross Water street, it would not; what is the value of the property south of Water street so cut off?

A. It would be worth very little.

Q. What is the value of the property north of Water street so cut off?

A. Fully $20,000.

Q. What does that sum in your estimation include?

A. The brick warehouse, corn barn and mill.

Q. Does it not include the canal front, and the water privilege, and the vacant ground between the corn barn and the warehouse and the mill as it now stands?

A. It does; the water privilege is, I understand, 150 inches.

Q. Who built the corn barn?

209 A. It was built before Mr. Young's purchase, I think.

Q. Are you just as sure of that as you are to anything else you have testified to?

A. I feel very confident my answer is correct.

Q. And you feel just as confident of the correctness of that answer as you do of all your other answers?

A. I think I do.

Q. What kind of a roof has the corn barn; tin or shingle?

A. It has tin now, I think. It was pitch and gravel when it was first built. This has been repaired, but a corn-barn was there; I think this one was there. I remember his underpinning it.

Q. Do you know what repairs Mr. Young has put upon that property since his purchase? Say particularly upon the wheel.

A. I did not know that he had done anything to the wheel.

Q. Do you know of his having purchased and placed in there any new burrs?

210 A. One pair, certain. I don't know of any others.

Q. Look at the plat before you & say what would be the value of that portion of the mill lying west of Fayette street, and bounded on the west by the west line of the corn-barn. You will notice that the west line of Fayette street runs through the mill. I wish to know the value of the parcel most upon the street, and assuming that the use of the street should be prohibited.

A. Be valuable only for the wharf front about the machinery and bricks and grounds provided they had no use of the portion of the mill on Fayette street.

Q. Well, what would be its value in dollars under those conditions?

A. Water right, $5,000; machinery, old materials, &c., from $3,000 to $5,000; ground, about $2,000.

Q. What would be its value without the water right? I mean the

part of the mill west of Fayette st. and the corn-barn, and the
211 ground on which they stand.

A. I answered that above. My answer is $5,000 for old machinery and material, and $2,000 for the ground.

Q. Do you not include in this the part of the mill in Fayette street, or its material and the machinery in Fayette street?

A. My estimate is based on removal of the whole building.

Q. What would be the value of the mill, supposing it only fronted 8 feet & 6 inches on the canal, & 25 feet 2½ inches on Water street—that is, suppose the whole part of the mill on Fayette street was taken away, did not see it at all, & without any water right or any fanciful circumstances?

A. I think you calculate it down too fine for me.

Q. Would it be worth anything?

A. It would be worth the old material, whatever that would bring, together with the machinery, with the value of the land.

Q. How much would that be worth, in your opinion?

212 A. I have answered that, that you have calculated that down too fine.

Q. Would it be worth $50?

A. It would, and more.

Q. Would it be worth $50,000?

A. No, sir. If Mr. Jones will wait I will give him a little kind of calculation.

Q. Well, I will wait.

A. From $1,200 to $1,500, exclusive of any machinery.

Redirect:

Q. Describe, if you please, what has been styled here as Fayette street, between Water st. and the canal?

A. It is level ground running back from Water street. I should say from looking at the plat, about 61 feet to the bank of the canal, which is about 25 feet in height; that is this embankment. It is not graded or paved as a street, & would be impassable as a street under almost any circumstances. The descent from the canal to the level below is perpendicular. On the other side of the canal, between the canal and Bridge st., which is north of the canal, the continuation of Fayette st., if laid out, is not visible. Mr. Dyer has a shop on Bridge st. where Fayette would run if continued. The appurtenances of Dyer's shop cover the space where the street would be if caved out. Between
213 Dyer's shop & the canal is occupied, I believe, as a yard, & ends abruptly at the canal, where there is a wall of about ten feet in height.

(The foregoing answer, so far as it transcends the limits of the question, was taken by consent of counsel.)

Recess.

Q. Mr. Tenney, is Fayette st. a public highway?

(Objected to as a question of law.)

A. I should consider a public highway a street open to the public, and that portion of it does not seem to be.

Q. Is not Fayette st. one of the largest streets in Georgetown?

A. I think it is one of them.

Q. Now you only think or say that that part of it that you say is not open to the public is not a public highway?

A. I think it is a street laid down in the maps and not capable of use.

Q. You say that this part lying between the canal and Water street is incapable of use?

A. For a street I should say so, but for other purposes——

Q. Is Welch's mill on the east side of Fayette street at the place indicated?

A. Yes, sir.

214 Q. I' there not a door opening from Welch's mill on Fayette st. at the place?

A. Not to my knowledge.

Q. If there were no illegal obstructions of Fayette st. between Water st. and the canal, could not the reception and delivery of goods be made on both sides of Fayette street?

A. I don't know what you call illegal, but if the street was unoccupied, could be used for the reception and delivery of goods on both sides.

Q. Fayette street at this place is perfectly accessable from Water street, is not?

A. Yes, sir.

Q. About on the same level, or——

A. Yes, sir.

Q. What houses are on Fayette street between Water street and the canal?

A. I have understood portion of Mr. Young's mill is on the street and a small portion of Welch's. There are no other buildings be-

215 tween Water street and the canal, except the Young mill & Welch's mill—Welch & Herr's mentioned is the largest flour mill in Georgetown.

JNO. TENNEY.

Sworn and subscribed to before me this 7th day of August, 1874.

J. J. JOHNSON,
Exam'r.

Adjourned till Tuesday next, at 1 o'c'k p. m.

J. J. JOHNSON,
Exam'r.

Met and adjourned till Monday the 17th inst., at 12 o'cl'k m.

J. J. JOHNSON,
Exam'r.

Met pursuant to above.
Present, counsel for complainant.
Adjourned till Wednesday the 19th inst., at 12 o'clock m.

J. J. JOHNSON,
Exam'r.

Met pursuant to above, and adjourned.

J. J. JOHNSON,
Exam'r.

216 *Testimony for defendant—Filed Feb'y* 23, 1875.

In the supreme court of the District of Columbia. In equity.

BRADLEY ET AL. *vs.* YOUNG ET AL. } No. 3153. Doc. 12.

For defendant.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered, that at an examination of witnesses begun and held and continued from time to time by adjournment, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at my office, No. 342 D street, in the city of Washington, in said district, the within named witnesses to testify on the part and behalf of the defendant, in a certain cause now depending in the supreme court of the District of Columbia, wherein Bradley et al. are complainants, and Young et. al. are defendants.

J. J. JOHNSON, *Ex'r.*

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218 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John J. Johnson, examiner in chancery, do hereby certify, that in pursuance of agreement the foregoing depositions were taken down and reduced to writing by Mr. Gansler, a phonographer, by consent of respective counsel in the presence of, and from the statement of the witnesses at the time, and place designated in the caption thereof, and were by me read over to the witnesses, and by them subscribed in my presence, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

JOHN J. JOHNSON,
Examiner in Chancery.

219 FREDERICK W. JONES sworn and examined:

By Mr. JONES:

My age is nearly 40, my occupation is attorney-at-law, my residence is Georgetown. I have been attorney for Mr. Young for five or six years. In, I think, the month of May, 1871, he told me that Mr. Tom. Bradley had offered to sell him all that part of the Bradley estate lying between Water street and the canal, and Fayette street and the Davidson mill at that time, now Tenney's, and Mr. Young employed me to

examine the title and also to prepare the necessary papers. I had frequent conversation with Mr. A. Thomas Bradley, and also Mr. John C. Kennedy, who was the general counsel for the Bradley estate in respect to this matter. I am entirely ignorant of any other paper being signed in respect to the sale except the two of which Exhibit A is a
220 duplicate. These two papers (Exhibit A and its duplicate) were signed by Mr. Bradley in my presence, at the Washington City Savings Bank on the day of its date.

To the best of my recollection Mr. Bradley had the paper in his possession for two or three days previous to its execution. I completed the examination of the title, prepared the deeds, and the matter was consummated sometime in July, 1871. I found the title encumbered by, I think, three old deeds of trust, and considerable time and trouble was expended in obtaining these releases, all of which I prepared. There could have been no mistake on the part of Mr. Bradley, Mr. Kennedy, Mr. Young, or myself in regard to the quantity to be conveyed, because it must have been repeated many times, that (opinions objected to—J. J. J., *Ex'r*) it was all the property north of Water street and west of Fayette street. I knew as well as Mr. Young and the other parties that the mill was largely in the street. The suit in the case of
221 Welch & Herr against the Cumberland Coal and Iron Company, in which a survey had been made, disclosed the encroachment of the mill upon the street, and this survey was hanging in Welch's mill, the mill immediately east of the Young mill.

The negotiation for this sale—I mean from the time Mr. Young first spoke to me up to the time it was consummated—was probably three months, or nearly so, and the deed which Mr. Bradley signed was in his possession for many days before it was finally executed. I had some connection with the business where mills have been transferred in Georgetown, among others the Shoemaker-Edes mill & the Robinson-Shoemaker mill, and profess some familiarity with the value of milling property in Georgetown. I am an owner of real estate in Georgetown myself; my father-in-law was assessor there. To the best of my judgment the property purchased by Mr. Young is worth not over $9,000 to day, nor do I believe it would bring at auction over that amount.
222 If the water privilege can be carried to any other place, and to this the permission of the Canal Company only is necessary, I do not believe the property is worth $5,000. One of the reasons for this opinion is that, from the Aqueduct Bridge, in Georgetown, up to the Little Falls Bridge, a distance of two or three miles, there are many places adapted for mill sites that can be bought for almost a nominal sum. The property purchased by Mr. Young is bounded on the south by Water street, which is a public highway, seventy feet wide, and which, if kept open, necessarily disconnects all property on the south side of Water street from communication with the canal. It is also bounded on the east by Fayette street, which is also a public highway sixty feet wide.

223 Cross-examination of F. W. Jones, as follows:

Q. In whose handwriting are the two papers of which Exhibit A is a duplicate?

A. Thomas H. Callan.

Q. Is he not in your office?

A. He is not. He & I occupy the adjoining rooms.

Q. What property do you own in Georgetown?

A. I own three pieces of property—two on First street (dwelling-

houses and one big lot I am holding for a rise, nearly opposite the Convent). I owned another house. which I sold last year.

Q. When was your father-in-law assessor?

A. Last year. He has been living with me for the last twelve years, and often during his preparation of his assessment books he would ask me my ideas of the assessment of property, and I have gone over the list with him. He was the assessor for the district in which this very property is located.

234 Q. Do you mean to say that you became familiar with the value of coal & milling property?

A. Not specially.

Q. You say in your testimony that if the water privilege could be carried to any other place (and to this the permission of the Canal Company only is necessary), you do not believe the property worth $5,000. What water privilege do you refer to, the old water privilege or the new grant obtained by Young from Henry Dodge?

A. I meant all the water—that is, if the property could not be used as a mill, that the whole would not be worth $5,000 in my opinion. I mean all the water power.

Q. You do not mean to say that the water power obtained by Young from Dodge cannot be used at any point other than the mill on the property in controversy?

A. I suppose it could be used anywhere with the permission
225 of the Canal Company. The deed from Dodge to Young will show.

Q. Can the coal business be carried on above the Aqueduct Bridge?

A. It can't, to ship coal by sailing vessels, but it has been by steamboats and barges. Sailing vessels, with masts, can't go above the Aqueduct.

Q. The coal business, as a matter of fact, is carried on by means of sailing vessels?

A. Nearly all of it.

Q. Have you any idea for how many years Fayette street has been permanently obstructed by the canal?

A. Ever since the canal was finished—completed. I think it was between the years 1833 and 1837—say 40 years.

F. W. JONES.

Sworn & subscribed to before me this 21st of Jan'y, 1875.

J. J. JOHNSON, *Ex'r.*

226 MARK YOUNG sworn & examined.

By Mr. JONES:

Q. Please state your age, residence, and occupation, and whether you are one of the defendants in this case.

A. My age is 48; occupation, miller; residence, No. 1221 I street, I am one of the defendants in this case.

Q. How long had you been in occupation of a mill, in Georgetown, before you purchased it? Please state as particularly as you can, and the rent that you paid.

A. Somewhere about nine years, I think.

Q. What did you pay for rent?

A. The first lease was for five years, for $700 a year, and then $2,000 a year, & then it was reduced to $1,500.

Q. How came it to be increased, and who made it?

A. Well, I meant to rent again from him, and I told him I had

227 done well under his lease, and I could afford to give him more rent for it, and I voluntarily gave him $2,000.

Q. "Him" you speak of is William A. Bradley?

A. Yes, sir, William A. Bradley.

Q. Now deceased?

A. Yes, sir.

Q. About what time would your last lease have expired as near as you can remember?

A. It would have expired in 1871, I think; about the 11th of July.

Q. Well, now, just state the location of the mill that you speak of—the general location.

A. It is on the south side of the canal, and on the north side of Water street, and the west side of Fayette street, in Georgetown.

Q. What negotiations took place between you and A. Thomas Bradley before—say three or four months before the expiration of your lease, if anything? State them in full and particularly.

228 A. I told Thomas Bradley that I would not rent his mill any longer; that I gave notice to that effect; that I was going to buy a mill or build one.

Q. Did you say to him that it would be cheaper or dearer to you to do so?

(Declarations of witness objected to.)

A. I told him it would be cheaper to me to build one of my own as his needed so much repairs, that I could not afford to repair it and pay the rent; that I had several locations picked out.

Q. What did he say in respect to this?

A. He told me he would consider it and let me know. So I saw him some time afterwards and he made a proposition to sell me the mill property all north of Water street.

Q. Well how came he to make that proposition to you? What did he say why he made it?

A. He said that if I did not rent that property and I would build a new one, it would take the trade away from that.

Q. Did he say he could get another tenant for it?

229 A. He said I was a good tenant and he said he would rather me to have the property than any one else. He wanted me to buy the mill and we agreed on the terms, $13,900.

Q. How long was that before the expiration of the lease do you suppose?

A. It was about a month before the expiration of the lease.

Q. How many times had you seen him in regard to it? How many conversations did you have?

A. I had several conversations with him repeatedly. He wanted to rent it to me, but I positively refused to rent it from him on any conditions and then he agreed to sell it to me.

Q. Well, now, did you offer to buy it from him or did he offer to sell it to you?

A. He offered to sell me the property when he saw that I was not going to stay there.

Q. Now, then, what property did he say he would sell to you and what property was discussed during these negotiations of buying from him?

(The foregoing conversations between the witness and Bradley objected to.—J. J. J., Ex'r.)

230 A. All the property north of Water street that belonged to the Bradley estate, north of Water street and west of Fayette street.

Q. Can you be mistaken about that?
(Objected to as leading.—J. J. J., Ex'r.)
A. No, sir, I cannot be mistaken about it.
Q. How often was the property the subject of negotiation mentioned between you—the dimensions, and so on?
A. Well, several times; I suppose half a dozen times.
Q. How was the mill you occupied situated in reference to streets?
A. One-half of the mill sets on Fayette street.
Q. Were you aware of that?
A. I was aware of that.
Q. And was he aware of it?
A. Certainly he was. I told him at the time I bought that I did not propose to buy corporation property, that I was buying the estate property.

231 Q. Now, Mr. Young, I want to show you a paper (submitting Exhibit A to the witness). Who submitted that paper to you first that you know of, or where did you first see that paper?
A. I saw that paper first in front of Ruff's bank.
Q. State where the bank is?
A. On the corner of Louisiana avenue and Seventh street.
Q. Who signed it first?
A. A. Thomas Bradley.
Q. Was it then shown to and signed by you?
A. Yes, sir.
Q. Who were present at that time?
A. Mr. Jones & Judge John C. Kennedy.
Q. What conversation ensued after the signature of the paper by you and Mr. Kennedy and Mr. Bradley between you and Mr. Kennedy and Mr. Bradley? State it as near as you can recollect it.
(Conversation between witness, Kennedy, and Bradley objected to.—J. J. J., Ex'r.)

232 A. Mr. Kennedy & Mr. Bradley said to me, "Now, Mr. Young, you have bought all north of Water street and you ought to own all south of Water street, as both pieces of property ought to belong to the same person." I replied to them if they would sell me a bargain in the south piece, I would buy it, as I had paid him a good price for that I had purchased on the north side of Water street. I asked them then what they wanted for it. They said $12,000. I told them that I would give $8,000 cash for it, but they did not accept of my offer. A. Thomas Bradley repeatedly insisted on my buying the property afterwards, and he told me he would not sell to any person unless he sold it to me. He told me that he was offered $12,000 for the property, and I replied that he had better take it; that I positively would not give it; and then again he told me he would not sell it for that unless I bought it, & I made a reply to him, you only ask $12,000 and you say

233 you were offered $12,000, and I wanted him to tell me why he would not take it; and the reply he made was that he wanted me to own both pieces of property.
Q. What was your business at that time?
A. Milling. I also made a reply to him that I was not in the coal business and did not intend to go into it, therefore I did not care about the price of property, as it was a nuisance to my business at any rate.
(Answer objected to as not responsive.—J. J. J., *Ex'r.*)
Q. The coal business was?
A. Yes, sir.

Q. How long after this Exhibit A was signed was the transaction carried into effect by deeds and deeds of trust?

A. It was about a month afterwards, as nearly as I can recollect.

Q. What did you do at that time; did you make a cash payment?

A. Yes, sir; I paid one-third cash and gave him notes in two
234 equal installments, one & two years, and gave a deed of trust for it.

Q. And received the deed from him?

A. And received the deed from him for the same.

Q. Now what property was conveyed in the deeds?

A. It was all north of Water street.

Q. All the property described in Exhibit A?

A. Yes, sir.

Q. State, Mr. Young, what you have expended upon the property in the way of permanent improvements since you bought it. Give the names of the persons and the amounts of the payments you have made for these purposes.

(Opinion of witness as to what are permanent improvements objected to.—J. J. J., *Ex'r.*)

A. I paid William Gibson, for stone work, $505; C. Thomas, carpenter work, $426; R. A. Edmonston, brick work, $365; J. T. Prather, millwright, $1,500; J. T. Cartwright, carpenter, $1,500; Wm. H.
235 White, for painting, $77; Robinson Bros., machinery, $75; arching the tail race and drainage pipes, $240; elevators and buckets, $238.

Q. Did you obtain any additional water privilege; and if so, how much did you pay for it?

A. I obtained the privilege of fifty inches of water, for which I paid $3,750.

Q. Why did you purchase this additional water?

A. The Canal Company put in gauges, and the result was we had not water enough.

Q. Gauges for what?

A. When I purchased the mill we were drawing as much water as would run the mill without any difficulty in regard to the measurement. Shortly after I bought it the gauges were put in by the Canal Company to measure the water to each mill, and I found that the gauge placed at my mill did not give me water enough to drive the machinery,
236 and, therefore, I was compelled to purchase additional water, which I did, as before stated.

Q. State whether these improvements which you have placed upon the mill since your purchase are of a permanent character, and add to the value of the property.

(Opinion of witness as to permanent improvements objected to.—J. J. J., *Ex'r.*)

A. I was compelled to put those improvements on, and they are permanent improvements. If I had not done it I could not have run my mill.

Q. Were they such improvements as a tenant would place upon it? Suppose you simply remained there as tenant?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. They are not of that kind of improvements.

Q. That is, you could have patched it?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. Yes, sir; I could have patched it up. These are permanent im-

provements, and such as I would not have put on if I had been a tenant.

237 Q. State the payments that you have made in accordance with this bargain that you made with Mr. Bradley.

A. I paid him one-third cash and gave notes for one and two years. The first note I paid in bank, when it was due, but the second note they have never presented for payment yet, supposing they still hold it.

Q. Are you ready to pay it?

A. Ready to pay it at any time when presented, and always have been.

Q. Mr. Young, when you bought this property the coal company were occupying a portion of it for which they paid rent to A. Thomas Bradley; please state if you had any conversation with Mr. Bradley, after your purchase of the property, as to his paying a part of the rent from the coal company to you, and what he said and what he did in respect to that.

(Conversation with Mr. Bradley objected to.—J. J. J., *Ex'r.*)

238 A. I asked Tom for the rent of my portion of the property that he was getting from the coal company, and he told me I ought not to be too hard on him, that I ought to allow him part of it. I told Tom to give me an order on the coal company for my share. He told me "no," that he would collect it and pay me himself, which he did, although he never said anything to me about the amount of property he sold to me, nor anything of the kind; never complained that he sold it too cheap.

Q. Did he ever deny your right to receive part of the rent?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. No, he never denied any right that I had to receive it. He paid me what I claimed.

Q. Did Mr. Bradley continue to pay this rent up to the expiration of the coal company's lease?

(Objected to as leading.—J. J. J.)

239 A. I think he did. He promised to pay me, but he told me that the coal company had not paid him, and therefore he could not pay me.

Q. I suppose you saw him frequently about this matter after the purchase?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. O, yes; frequently.

Q. Did he ever, on any of these occasions, say that there had been any mistake whatever as to the amount of property conveyed to you?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. Never a word, in any way, shape, or form.

Q. Were you always aware that your purchase was the whole property north of Water street?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. Always was.

Q. Going from your mill to Tenney's mill?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. Yes, sir. That was always my impression, that I bought, and me and him frequently talked about the property, and he never denied himself selling me the whole amount.

240 Q. What was the first information that you had of this case, or any such pretense?

A. I never had any until the suit was entered to recover the property.

Q. Never had any information of it?

A. None at all; and I was very much surprised when I heard of it. I could not scarcely believe it.

(A plat of the Young property was here shown the witness by the counsel for defendants.)

Q. State if that exhibits a fair plat of the property.

A. (The witness examining the plat above referred to.) Yes, sir; that is a fair plat of the property.

Q. Are you familiar with the value of mill property in and about Georgetown?

A. Yes; I am pretty well posted with property there.

Q. How long have you been a practical miller, and how long have you been milling in Georgetown?

A. I have been milling in Georgetown about twelve years.

Q. Do you consider yourself a judge of the value of milling property?

241 A. Yes, sir.

Q. Well, now state, to the best of your judgment, what is the value of that property north of Water street, west of Fayette street, and south of the canal, and east of Tenney's mill. You may state what it is worth for milling purposes; you may state what it is worth for coal purposes; and then you may state what it is worth for any other purpose.

A. It is worth about $12,000.

Q. For any purpose?

A. For any purpose that you choose to apply it for. Take my good will away, and I would not give that for it to-day.

Q. I want to know how you came to pay $14,000 for it, when you say it was worth only $12,000?

A. I consider my good will worth more than the difference.

Q. You have been there how long?

A. I have been there about nine years.

Q. And was it the only corn mill in Georgetown at the time?

(Objected to as leading.—J. J. J., *Ex'r.*)

242 A. Yes, sir; the only corn mill.

Q. You have built up a business there, have you not?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. Yes, sir; I have built up a business there. When I took it, old Mr. Bradley offered me the whole property on both sides of Water street for $6,000, and offered it to me repeatedly at the same price. He told me he gave a man all he could make to stay in the mill to take care of it, and also told me that it was the only revenue that he had ever received from it that amounted to anything as a mill or property.

Q. Mr. Young, what is the present attitude of the coal business in Georgetown? Is it growing or not?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. No, sir; it is rather falling off. There are some going to Alexandria and some withdrew their trade and gone to Baltimore with it. I think the American Company has taken all theirs to Baltimore.

243 Q. Is property in demand for the transshipment of coal purposes in Georgetown?

A. I do not hear of any. I offered the right of way over my property for coal purposes for $500 a year for any length of time they wished to take it.

Q. Was it accepted or not?

A. It was not accepted.

Q. Well, I wish to know your disposition in regard to this property, whether you think you made a good bargain or not, or whether you would be willing to give it up if you could be made whole?

(Objected to as a matter of opinion.—J. J. J., *Ex'r.*)

A. I offered Mr. Davidge some time ago, if he would pay me my money back and all the bills of expenditure, he could have the property. The reply was that money was too tight and that Jones' bill was extravagant. I would not give it again if I had to do it over.

Q. You would not give the same price for it?

A. No, sir; I would not, as I could build a mill for a great deal less money.

244 Q. I want to know about the corn barn on the west side of the mill. Who built it and who paid for it?

A. I built the corn-crib and paid for it.

Q. The corn barn?

A. The corn barn or whatever you call it.

Q. Built it new?

A. Yes, sir; built it all new; every inch of it.

Q. What conversation did you ever have with James L. Davis in respect to selling this property or any part of it, in the fall of 1872 or the spring of 1873? State as near as you can recollect it.

A. I do not recollect of ever offering it at any price. I do not think I ever offered it to anybody.

Q. State if you were ever approached by anybody that you know of to purchase the property.

A. Yes, sir; he approached me, but I never put any price upon it, to the best of my knowledge.

Q. Mr. Davis says that you stated your figures as follows: "$20,000 without the mill; $30,000 with the mill, and 35 or 40 thousand

245 dollars for the whole property with the water right." Do you have any recollection of it?

A. I have no recollection of anything of the kind; none at all.

Q. If you did make such a statement, how came you to do so?

A. If I did, it must have been in the way of a *cho*ke, for I am positive I was never vain enough as to ask any such price as that for the property in reality.

Q. Mr. John Tenney has stated that shortly after you purchased the mill he met you on the street and said that he would like to give you $20,000 for the whole property, and that you answered, "Probably several others would too." Do you remember such a conversation?

A. No, sir; none at all.

Q. What kind of *p*erson is John Tenney, or what was he at that time?

A. He was but a strippling of a boy. I really never offered it for any price. I was often spoken to in a jesting way and I thought they

246 were playing nonsense with me, and I would play nonsense with them, and as to offering it for any such fabulous price .I never did.

Q. Is that the character of conversation that you had?

(Objected to as leading.—J. J. J., *Ex'r.*)

A. Yes, sir; they would come running to me and asked me what I would take for it, and I would say, "If you will give me $100,000 for it I will sell it."

Q Did you ever have a serious offer to buy or a serious offer to sell?

A. No, sir; none at all. If they wish to find the value let them come and make me an offer; then they will tell what I will take for the property, and they need not go very high.

Q. Do you know the Dawson property, now occupied by Spencer and others?

A. Yes, sir.

Q. Is it deeper than the property occupied by you, supposing you went right to the river?

A. I think it is.

Q. Is that the property leased by Wm. A. Bradley and W. L. Dawson?

A. Yes, sir.

247 Q. Estimating the value of that Dawson property at $10,000, what would be the value of the property that you now own, together with its water right, if it went right to the river; what would be the relative value, considering the house and all on the Dawson property?

A. About $6,000.

Q. That would be worth $6,000 more?

A. Yes, sir; the Dawson property would.

Q. That is, if both properties *when* right through from the canal to the river?

A. Yes, sir.

JAN'Y 6TH, 1875.

Met pursuant to agreement. Present, counsel neither side, and adjourned till the 13th inst., at 1 o'clock p. m.

J. J. JOHNSON,
Exam'r.

248 Met pursuant to above. Present, counsel on either side, when the cross-examination of Mark Young was resumed; commenced as follows:

Q. I wish you would state why your rent was reduced from $2,000 to $1,500 a year.

A. Business would not afford to pay more.

Q. Did you then complain of the mill being out of repair?

A. No more than usual.

Q. The mill at that time, then, was no more than usual out of repair?

A. That is all.

Q. When did this reduction of $1,500 take place?

A. I can't recollect exactly, but it was one or two years under the $2,000 lease; I can't tell how long I had it for *it* $2,000. The lease was about the 11th of July. The last lease was $1,500, and dated on the 11th of July; I don't recollect the year.

Q. I wish you would name any conversation in which the dimensions of the mill property, the subject of negotiation between you and
240 Mr. Bradley, were particularly mentioned. State, also, when such conversation took place, and where, and who was present.

A. The conversation took place at the post-office in Georgetown, on the street-cars on Pennsylvania avenue, and at his office. It was from on' to two months before I bought it. No one was present.

Q. Can you now undertake to give the language used by Mr. Bradley on either occasion?

A. I can give such as I recollect of.

Q. Did you make any memorandum or note of what was said on each occasion?

A Not any.

Q. You state that the first time you saw the paper marked Exhibit A was in front of Ruff's Bank in this city. How long before that time had you employed Mr. Jones to negotiate the purchase of the property?
(Objected to.)
A. I don't know how long it was.
Q. Tell me about how long, as well as you can recollect.
A. I suppose somewhere in the neighborhood of a month or two. I can't tell positively how long it was.
250 Q. Were your instructions to Mr. Jones to draw a contract for the purchase of the property?
A. My instructions to Jones was to buy the property.
Q. And this was about a month or two before you saw the paper in front of Ruff's Bank?
A. As near as I can come at it.
(Mr. Jones here interposed and stated to the witness that he had been made to say that he employed him (Jones) to negotiate the sale, & that in the future he must be particular to understand questions before he answered them.)
The witness then resumes:
I merely wish to correct what I have said. I employed Jones to close the sale, not to negotiate the sale.
Q. But before you employed Jones no written contract for the sale or purchase had been signed by you or Bradley or anybody, had it?
A. No written contract.
Q. Exhibit A, except the following words: "I accept the above,
251 June 2d, 1871. Witness, F. W. Jones," is not in the handwriting of Mr. Jones, is it?
A. I don't know whether it is or not; I didn't see that paper written.
Q. Do you mean to say that you have any doubt that the body of that paper is not in handwriting of Mr. Jones?
A. It does not look like his handwriting.
Q. You have seen him write, have you not?
A. Yes.
Q. More than once?
A. Yes.
Q. How often?
A. Very often.
Q. To the best of your belief, what portion of that paper is in his handwriting?
A. I think the signature, F. W. Jones, is in his handwriting.
Q. Can you state in detail the items of work done by Gibson, Thomas, Edmonston, and others, so as to enable us to judge how far such work was a benefit to the inheritance, and how far beneficial to the business of a tenant engaged in milling?
252 A. The work will show for itself.
Q. You can't state in detail, I suppose?
A. I cannot state it in detail.
Q. Have you the bills for that work?
A. Yes.
Q. Why did you not produce them?
A. They were produced.
Q. When?
A. At the last examination here.
Q. Were they ever filed with the examiner?
A. I do not know.
Q. In the improvements you made upon the mill property, how far did you increase the capacity of your mill, or did you increase it at all?

A. About one-third.

Q. How many extra burrs did you put in?

A. One pair. The mill has three pair of burrs at present; before it only had two pair.

Q. You say you obtained the privilege of fifty additional inches of water, at the price of $3,750. From whom did you obtain that privilege?

253 A. Henry H. Dodge. I think he charged me more than that for the water. I think he charged me $4,000.

Q. Did Mr. Dodge give you a written lease?

A. He gave me a deed.

Q. Water granted by Mr. Dodge is not confined, in respect of its use, to the particular locality, is it?

A. It's not moveable; where it is gauged it is permanent. I don't know anything about it but what I am told.

Q. Was not the right of the canal company to put in gauges at the canal denied by all or nearly all of the other millers on the canal, and is not that right the subject of controversy now between the different millers and the canal company, and was it not the subject of controversy when you bought the additional water from Mr. Dodge?

A. We all submitted to the canal company's law and put the gauges in where they directed us, over the wheel.

254 Q. But didn't the canal leases call for putting the gauges at the bank of the canal?

A. Yes.

Q. Was your gauge put at the bank or put near the wheel?

A. Put near the wheel.

Q. Then you were simply treated like the other millers, were you not?

A. Yes.

Q. Am I to understand you that before that time you had no gauge whatever, and were using the water of the canal company libitum, without paying for it?

A. I was paying for one hundred and fifty inches and used all I wanted.

Q. Did you ever try to run your mill with two sets of burrs and one hundred and fifty inches of water gauged at the wheel?

A. Yes.

Q. When was that?

A. When the gauges were first put in.

Q. After you purchased the property?

A. Yes.

Q. Had you not three sets of burrs?

255 A. Yes.

Q. Are you not mistaken when you say that Mr. Bradley continued to pay you a part of the coal company's rent up to the expiration of its lease?

A. He did not pay up to the expiration exactly, but promised to pay.

Q. Are you not mistaken when you say the first information you had of this case, or the claim of the Bradley children, was the filing of the bill?

A. It was a very short time before; to the best of recollection about two weeks.

Q. To whom did you offer the right of way over your property for coal purposes for $5,000 a year?

A. To Mr. Spencer, the agent, I think, of Hampshire Coal Company.

Q. Was not this suit then pending?

A. Yes.

Q. Was not the property, except the mill, in the possession of the Bradley children?

256 A. I don't know who it was in possession of—that is the question with me.

Q. You know that you were not *not* in possession of the property, do you not?

A. I thought I was.

Q. Was not the coal company at the time you made that offer using a right of way over part of the property?

A. No, sir.

Q. Were the tenants on the property west of your mill at that time paying rent to you or to the Bradley children?

A. They promised to pay to me, but did not.

Q. Had the coal company ever paid any rent to you?

A. No, sir.

Q. Why were you willing to create a nuisance in proximity to your corn-mill for the paltry rent of $500 a year?

A. I did not propose to do anything of the kind. I proposed only renting them the tract next to the warehouse and not in front of my mill, which is on the street.

Adjourned till the 15 instant, at 3 o'clock p. m.

J. J. JOHNSON, *Ex'r.*

257 Met and adjourned.

J. J. JOHNSON, *Ex'r.*

Met pursuant to notice.

Present, counsel on either side, when the cross-examination was resumed, as follows:

Q. Was not the coal company at the time you made the offer exercising the right of way and paying for it a rent of $1,200 a year?

A. No, sir.

Q. Was it after they had given up the property?

A. It was after they had quit shipping coal.

Q. Was it not after this suit was brought?

A. Yes, sir.

Q. How many tr*acts* were covered by this proposition of $500?

A. Only one tr*act*. You may put in there if you have no objection, I will take $300 and give a permanent lease.

Q. Where the corn-crib is, was there not a corn-crib or building when you bought this property?

A. No, sir.

258 Q. Was there not a corn-crib or barn upon the property?

A. No, sir.

Q. Had there not been one there?

A. None except what I put there—there never had been.

Q. You state that you have no recollection of the conversation you had with Mr. Davis touching your figures for the sale of the property. Do you mean to say that the conversation testified to by Mr. Davis did not take place?

A. The figures I talked to him about I had no idea of him accepting of them; it was all formality. I had no idea he wanted to buy. It was not my asking price at all.

Q. The figures, however, that you mentioned to Davis, were the figures testified to by him, were they not?

A. No, sir; them were not the figures.

Q. What were the figures named by you to Davis?

A. $20,000 for the whole.

259 Q. Are you sure you put that price upon it?

A. To the best of my knowledge.

Q. Have you a distinct recollection of doing so?

A. Not distinct; it has been too long ago.

Q. May you not then have named other figures than $20,000?

A. I never named any figure I expected to get, as I thought none of them wanted to buy, and I did not buy it with the intention of selling it.

Q. Are you sure you named $20,000 to Davis?

A. To the best of my knowledge.

Q. Was that a joking or serious offer?

A. Joke.

Q. Did you tell Davis you were joking?

A. He did not ask me that question.

Q. Did you tell Tenney you were joking with him?

A. No; I did not.

Redirect:

Mr. Young, state what conversations you have had with per-
260 sons about buying and selling this property, and the mode you usually treated their offer.

A. Some people would come & tell me I had bought a great bargain, and would ask me what I would take for it. Some I would tell ten, twenty, and thirty thousand dollars, according to my customer. Some again would come & tell me that I paid too much for my property. Then I would tell I bought it for my own use, & my own money paid for it, and I did not think it was anybod*ie*'s business whether I bought a bargain or not. That is about the sum and substance of the conversations I had with people, and it is about as short a space as I can put it in. I do not think I ever had a bona fide purchaser for the property. I think that is about all I need put in there

(He*re*say and opinion of witness objected to by Mr. Davidge.)

M. YOUNG.

Sworn & subscribed to before me, this 26th of Jan'y, 1875.

J. J. JOHNSON, *Ex'r.*

261 The counsel for the defendants herewith files a certified copy of a lease from William A. Bradley to W. L. Dawson, for property bounding on Frederick street from the canal to the river, and the same is herewith filed, marked "Defendant's Exhibit A."

262 William A. Bradley to William L. Dawson. Lease. Recorded 6th September, 1862. J. A. S. Fol. 292.

This indenture, made and executed this first day of August, in the year of our Lord one thousand eight hundred and sixty-two, between William A. Bradley, of the District of Columbia, of the one part, and William L. Dawson, of said District, of the other part, witnesseth:

That the said Bradley, for and in consideration of the payment of the rent and performance of the covenants hereinafter mentioned, on the part of the said Dawson, his executors, administrators and assigns, to

be paid and performed, hath demised, granted, and to farm letten unto the said Dawson, and by these presents doth demise, grant, and to farm let unto the said Dawson all those pieces or parcels of land lying in Georgetown, in the District of Columbia, beginning for the first
263 of said parcels at the intersection of Frederick and Water streets, at the southeast corner of said parcel to the southern line of the Chesapeake and Ohio Canal; thence with line of said canal westwardly to an alley, thence southwardly with the eastern line of said alley to Water street, thence with the northern line of said Water street to the place of beginning.

Also that piece or parcel of land south of the foregoing-described piece or parcel of land as will be found within the following boundaries, viz, for the northern boundary, Water street; eastern boundary, Frederick street; southern boundary, the Potomac River; western boundary, the eastern line of the property of Boyce, Taylor & Co., with the improvements thereon, and all the ways, alleys, rights, and privileges to the said pieces or parcels of land belonging or in any wise appertaining.

To have and to hold the said pieces or parcels of land and prem-
264 ises above described, with the appurtenances, unto the said Dawson, his executors, administrators, and assigns from the sixteenth day of November next and during the full end and term of ninety-nine years from thence next ensuing, and fully to be complete and ended, yielding and paying therefor yearly and every year during the said term to the said Bradley, his heirs and assigns, the yearly sum for the first year of four hundred dollars, for the second year the sum of five hundred dollars, and for all future years the sum of six hundred dollars, current money, clear of all deductions, discounts, and defalcations for taxes, assessments, rates, and all other public dues or charges which may at any time, after the sixteenth day of November next ensuing, be laid, levied, taxed, imposed, or assessed on the said pieces or parcels of land and premises or any part thereof, or on any buildings thereon, in quarterly payments; that is to say, on the 16th days of February, the 16th day of May, the 16th day of August, and the 16th day of No-
265 vember, in each and every year during continuance of this present demise; provided, always, and on this condition, that if it shall happen that the said yearly rent (without any deduction or discount as aforesaid) shall be in arrear or unpaid for the space of thirty days next after any of the days of payment thereof before mentioned, that then it shall and may be lawful to and for the said Bradley, his heirs and assigns, and any of them, into the demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, repos'ess and enjoy as in his former estate, and the said Dawson, his executors, administrators, and assigns, and all others, the occupiers and possessors of said demised premises, or any part thereof, thereout and from thence to expel and put out until all such arrearages of rent shall be fully satisfied and paid, or make distress therefor, at the option of the said Bradley, his heirs or assigns; and also on this further proviso and condition, that if the said yearly rent, without any dis-
266 count or deduction as aforesaid, shall be in arrear or unpaid by the space of one year next after any of the days of payment thereof before mentioned, that then it shall and may be lawful to and for the said Bradley, his heirs and assigns, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, repossess and enjoy, as in his former estate, and the said Dawson, his executors, administrators, and assigns, and any other occupiers and possessors of

Q. The figures, however, that you mentioned to Davis, were the figures testified to by him, were they not?

A. No, sir; them were not the figures.

Q. What were the figures named by you to Davis?

A. $20,000 for the whole.

259 Q. Are you sure you put that price upon it?

A. To the best of my knowledge.

Q. Have you a distinct recollection of doing so?

A. Not distinct; it has been too long ago.

Q. May you not then have named other figures than $20,000?

A. I never named any figure I expected to get, as I thought none of them wanted to buy, and I did not buy it with the intention of selling it.

Q. Are you sure you named $20,000 to Davis?

A. To the best of my knowledge.

Q. Was that a joking or serious offer?

A. Joke.

Q. Did you tell Davis you were joking?

A. He did not ask me that question.

Q. Did you tell Tenney you were joking with him?

A. No; I did not.

Redirect:

Mr. Young, state what conversations you have had with per-
260 sons about buying and selling this property, and the mode you usually treated their offer.

A. Some people would come & tell me I had bought a great bargain, and would ask me what I would take for it. Some I would tell ten, twenty, and thirty thousand dollars, according to my customer. Some again would come & tell me that I paid too much for my property. Then I would tell I bought it for my own use, & my own money paid for it, and I did not think it was anybod*ie*'s business whether I bought a bargain or not. That is about the sum and substance of the conversations I had with people, and it is about as short a space as I can put it in. I do not think I ever had a bona fide purchaser for the property. I think that is about all I need put in there

(He*re*say and opinion of witness objected to by Mr. Davidge.)

M. YOUNG.

Sworn & subscribed to before me, this 26th of Jan'y, 1875.

J. J. JOHNSON, *Ex'r.*

261 The counsel for the defendants herewith files a certified copy of a lease from William A. Bradley to W. L. Dawson, for property bounding on Frederick street from the canal to the river, and the same is herewith filed, marked "Defendant's Exhibit A."

262 William A. Bradley to William L. Dawson. Lease. Recorded 6th September, 1862. J. A. S. Fol. 292.

This indenture, made and executed this first day of August, in the year of our Lord one thousand eight hundred and sixty-two, between William A. Bradley, of the District of Columbia, of the one part, and William L. Dawson, of said District, of the other part, witnesseth:

That the said Bradley, for and in consideration of the payment of the rent and performance of the covenants hereinafter mentioned, on the part of the said Dawson, his executors, administrators and assigns, to

be paid and performed, hath demised, granted, and to farm letten unto the said Dawson, and by these presents doth demise, grant, and to farm let unto the said Dawson all those pieces or parcels of land lying in Georgetown, in the District of Columbia, beginning for the first
263 of said parcels at the intersection of Frederick and Water streets, at the southeast corner of said parcel to the southern line of the Chesapeake and Ohio Canal; thence with line of said canal westwardly to an alley, thence southwardly with the eastern line of said alley to Water street, thence with the northern line of said Water street to the place of beginning.

Also that piece or parcel of land south of the foregoing-described piece or parcel of land as will be found within the following boundaries, viz, for the northern boundary, Water street; eastern boundary, Frederick street; southern boundary, the Potomac River; western boundary, the eastern line of the property of Boyce, Taylor & Co., with the improvements thereon, and all the ways, alleys, rights, and privileges to the said pieces or parcels of land belonging or in any wise appertaining.

To have and to hold the said pieces or parcels of land and prem-
264 ises above described, with the appurtenances, unto the said Dawson, his executors, administrators, and assigns from the sixteenth day of November next and during the full end and term of ninety-nine years from thence next ensuing, and fully to be complete and ended, yielding and paying therefor yearly and every year during the said term to the said Bradley, his heirs and assigns, the yearly sum for the first year of four hundred dollars, for the second year the sum of five hundred dollars, and for all future years the sum of six hundred dollars, current money, clear of all deductions, discounts, and defalcations for taxes, assessments, rates, and all other public dues or charges which may at any time, after the sixteenth day of November next ensuing, be laid, levied, taxed, imposed, or assessed on the said pieces or parcels of land and premises or any part thereof, or on any buildings thereon, in quarterly payments; that is to say, on the 16th days of February, the 16th day of May, the 16th day of August, and the 16th day of No-
265 vember, in each and every year during continuance of this present demise; provided, always, and on this condition, that if it shall happen that the said yearly rent (without any deduction or discount as aforesaid) shall be in arrear or unpaid for the space of thirty days next after any of the days of payment thereof before mentioned, that then it shall and may be lawful to and for the said Bradley, his heirs and assigns, and any of them, into the demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, repos'ess and enjoy as in his former estate, and the said Dawson, his executors, administrators, and assigns, and all others, the occupiers and possessors of said demised premises, or any part thereof, thereout and from thence to expel and put out until all such arrearages of rent shall be fully satisfied and paid, or make distress therefor, at the option of the said Bradley, his heirs or assigns; and also on this further proviso and condition, that if the said yearly rent, without any dis-
266 count or deduction as aforesaid, shall be in arrear or unpaid by the space of one year next after any of the days of payment thereof before mentioned, that then it shall and may be lawful to and for the said Bradley, his heirs and assigns, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, repossess and enjoy, as in his former estate, and the said Dawson, his executors, administrators, and assigns, and any other occupiers and possessors of

said demised premises, or any part thereof, thereout and thencefrom expel and put out, that then and this case their deed shall from thenceforth be void and of none effect.

And the said Dawson for himself. his executors, administrators, and assigns, doth hereby covenant and agree and grant to and with the said Bradley, his heirs and assigns, in manner & form following, that is to say, that he, the said Dawson, his executors, administrators, and assigns will well and truly pay to the said Bradley, his heirs and assigns,
267 during the said term hereby demised the yearly rent above reserved, without any deduction or discount of any kind as aforesaid, at the times above limited for the payment of the same according to the purport, true intent, and meaning of these presents, and also that he, the said Dawson, his executors, administrators, and assigns shall and will at all times hereafter during the said term, hereby demised, bear, pay, and discharge all taxes, assessments, rates, and all other public dues which shall or may be taxed, levied, assessed, or imposed on the said pieces or parcels of land and improvements above demised.

And further that he, the aforesaid Dawson, his executors, administrators, and assigns shall and will effect, or cause to be effected, an insurance in some responsible insurance company of the buildings and improvements on said pieces or parcels of land above described against casualties by fire in the sum of twenty-five hundred dollars; and
268 in the event that the said buildings and improvements *or* damaged or destroyed by fire will apply the insurance money received towards the repairing or rebuilding of said buildings and improvements, and shall and will keep the said buildings insured, and all other buildings erected in their stead during the said term in the sum aforesaid.

And the said Bradley, for himself, his heirs and assigns, doth covenant and grant to and with the said Dawson, his executors, administrators, and assigns, that he and they respectively, on the payment of the rent and performance of the covenants hereinbefore mentioned and reserved on his and their part respectively to be paid and performed, shall and may peaceably and quietly have, hold, and use, occupy, possess, and enjoy the above demised premises, with their appurtenances and every part thereof, for and during the aforesaid term of ninety-nine years, without any let, trouble, or interruption of him, the said Bradley, his heirs or assigns, or any person or persons claiming by,
269 through, or under them, or any of them, and without any molestation from any person whomsoever.

And also that he, the said Bradley, his heirs and assigns, at any time or times hereinafter during the continuance of the present demise, on the request of the said Dawson, his executors, administrators, and assigns, and at his or their cost, shall and will make and execute, or cause to be made and executed, a new lease of the above demised premises for other ninety-nine years, to commence and take effect from and at the end of the term for which the same is above demised, subject to the same rent and under the like covenants as hereinbefore mentioned, so that this present demise may be renewable and renewed forever.

And further, that he, the said Dawson, his heirs, executors, administrators, and assigns shall have the right and privilege of purchasing at any time during the said term the said property above described and hereby demised at for the sum of ten thousand dollars; and that, on
270 the payment of any sum on account of said purchase not less than fifteen hundred dollars at a time, then and in this event the said rent above stipulated to be paid shall abate in proportion to the

purchase-money paid; and on the payment of the whole purchase-money that then the said Bradley and his heirs and assigns shall and will, by a good and sufficient deed, in fee simple, transfer and convey the said property above described, and every part thereof, to the said Dawson, his heirs and assigns.

In witness whereof the said parties have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

W. A. BRADLEY. [SEAL.]
WM. L. DAWSON. [SEAL.]

Signed, sealed, & delivered in the presence of—
F. I. MURPHEY.
THOMAS C. DONN.

271 DISTRICT OF COLUMBIA,
Washington County, to wit:

Be it remembered that on this first day of August, in the year of our Lord one thousand eight hundred and sixty-two, before the undersigned, two justices of the peace in and for the county aforesaid, personally appeared William A. Bradley and William L. Dawson, and acknowledged the foregoing instrument of writing to be their acts and deed.

Taken before and certified by—

[SEAL.] F. I. MURPHEY, *J. P.*
[SEAL.] THOMAS C. DONN, *J. P.*

272 JOHN SPENCER, of the city of Georgetown, aged 41 years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Please state your age, residence, and occupation.

A. I will be 41 next October; my residence is First & Frederick streets, Georgetown; and my occupation is that of a coal shipper.

Q. State whether you are familiar with the property purchased by Mark Young.

A. I am, sir.

Q. And the other properties in that neighborhood?

A. I think I am with the other properties.

Q. What property are you now in occupation of? State its location and size.

A. The property that I have charge of there now is located at the corner of Water and Frederick street', Georgetown, and has a width
273 of 120 feet. It occupies just one-half of that square between Frederick & Fayette street', Georgetown; just one-half.

Q. What are its northern & southern boundaries?

A. Its northern boundary is the Chesapeake and Ohio Canal; its southern boundary is the Potomac River, cut in two by Water street.

Q. What is its relative size compared with the property at the corner of Fayette & Water street'?

A. On which side?

Q. On the west side.

A. The Mark Young property, I think, occupies, so far as I know, one-third of the square. Our property is about one-half of the square; and, I think, that would be about one-third. The proportion would be about one-third to one-half.

Q. The north & south?

A. I do not know the exact feet.

Q. I mean the extent north & south.

A. Its extent north & south is the canal to Water street. Our property extends from the Chesapeake & Ohio Canal to the Potomac River; Water street intervening.

274 Q. Is it further from the canal to the Potomac River on your property than it is on the Mark Young property?

A. Well, the Mark Young property does not extend to the river; it only extends to Water street.

Q. Suppose it did extend to the river, which would be the deepest?

A. Ours would be the deepest.

Q. About how much?

A. I do not know. I should think, by giving a broad guess about it, that there would be about a difference of prehaps 20 to 30 feet in depth.

Q. Mr. Spencer, from whom do you rent that property?

A. From Mr. Gordon—Alonzo Gordon, of Philadelphia.

Q. Is it the same property that Mr. Gordon purchased at a chancery sale under a decree against Mr. Dorson?

A. Yes, sir.

Q. What is the value of that property?

A. It is valued at $10.000.

Q. State how you reached that valuation.

275 A. Well, sir, Mr. Dorson leased it at 6 per cent. upon its valuation. It was valued at $10,000. Mr. Dorson paid $600 a year rent.

Q. How is the building upon this property; I mean compared with the building on the Young property?

A. It is much larger, sir.

Q. Is it brick?

A. Yes, sir; a brick building.

Q. Do you know whether the lease to Dorson from William A. Bradley gave him the right to purchase the same at any time at $10,000?

A. Yes, sir; at any time.

Q. Now, if you know the property that Mr. Young bought, and are acquainted with the valuation of property in the neighborhood, state what in your opinion was the value of that property in June, 1871.

A. Compared with ours, sir, I should think it would be worth—if ours was worth $10,000, that it might be worth $8,000, as far as I could tell; so far as my knowledge goes.

276 Q. You have been living in Georgetown for how many years?

A. Fourteen years.

Q. Engaged in this coal-shipping business?

A. Yes, sir; all the time.

Cross-examined by Mr. DAVIDGE:

Q. When did Dorson lease the property, do you know?

A. I do not know, sir; but I think about—it must have been from 1859 to 1861; somewhere within that time.

Q. 1859 to 1861?

A. I do not know the exact date.

Q. Before the war, then?

A. About the beginning of the war.

Q. Do you know the term of the lease?

A. Well, I have always understood the term of years was 99 years.

Q. Renewal forever?

A. Yes, sir; with the privilege of buying at any time.

Q. At $10,000?

277 A. Yes, sir.

Mr. DAVIDGE (to Mr. Jones). What is the date of that lease, if you have it?

Mr. JONES. I do not know; I have not got it.

Q. (By Mr. DAVIDGE.) For whom are you agent now?

A. I am superintendent for the shipping agent for the New Central & George's Creek Company.

Q. How long have you been such?

A. I have been acting in the same capacity that I am now, sir, for a year, for that one company, but upon the same wharf and in the same capacity for the last twelve years; a little over twelve years.

Q. What is the name of the company

A. New Central & George's Creek Company. These are the companies we are now at present shipping for.

Q. Whom do you designate as "we"; who are with you in this transaction?

A. John P. Agnew.

Q. Then you and Agnew have a lease on the premises?

278 A. No, sir; we simply rent it. Mr. Agnew leased it. I have nothing whatever to do with the premises. I have personally nothing to do with the rental of the wharf.

Q. How long has Agnew rented the premises?

A. Since 1861.

Q. What rent did Agnew pay in 1861?

A. Well, that, sir, would depend—he rented it from Mr. Dorson and paid Mr. Dorson a tonnage of so much per ton, according to the quantity of coal shipped over it. He paid Mr. Dorson according to so much per ton. I forget the amount per ton, but it depended upon the quantity shipped over the wharf, during the war, what rent he paid.

Q. Then he paid Dorson a royalty according to what?

A. According to the business done?

Q. The tonnage?

A. Yes, sir.

Q. Has he continued that arrangement down to the present time?

A. No, sir; only down to the time Mr. Gordon purchased the lease.

279 Q. When did Gordon purchase the lease?

A. Now, that I cannot recollect. That point can easily be ascertained, though. I do not recollect, sir, the date.

Q. Do you mean down to the time when Gordon purchased the lease under a chancery decree?

A. Yes; that would be the time.

Q. About what time was that?

A. That I cannot tell. I do not recollect the time; several years ago; somewhere about three or four years ago.

Q. Well, after that time, what rent did Agnew pay for the premises?

A. He pays $1,350 a year.

Q. Who pays the taxes?

A. Well, that I do not know.

Q. What is the frontage of your property on the canal?

A. I think, sir, upon the canal, 127 feet. I think that is the frontage of it, I believe; that is, so far as I know now, 127 feet.

Q. What is the capacity of the portion of the property on the

280 Potomac River; is it as large as that of the Bradley property?

A. Which property do you refer to?

Q. The property on the river.

A. That I do not know; the extent of the Young property. I do not remember the number of feet.

Q. Can you tell me the frontage of the river?

A. It is the same as it is on the canal.

Q. Can you give me some idea of the depth of your property from the south side of Water street to the river—the mean depth?

A. I cannot tell, sir; but I should think it would be about 80 to 100 feet.

Q. Do you know whether Dorson made any lease of the property at $600 or whether or not he was not assignee of a lease already existing?

A. Well, I always understood from Mr. Dorson that he was the first lessee of the property.

Q. You know nothing of your own knowledge?

A. I know nothing of my own knowledge except what I heard from Mr. Dorson, and we used to pay the rent direct to Mr. Dorson,
281 and that often Mr. Dorson had offered to sell the property to Mr. Agnew; that is, the lease of the property.

Q. You say that down to the purchase of the property by Gordon you paid a royalty of so much per ton?

A. Yes, sir.

Q. You continued paying this royalty for a great many years?

A. Yes, sir.

Q. Now, cannot you tell me the amount of that royalty—how much per ton?

A. We used to pay, in the first instance, five cents per ton.

Q. And subsequently what did you pay?

A. We have paid as high as ten.

Q. Did you ever pay anything higher than ten?

A. No, sir.

Q. How many tons would you ship over the property in a year?

A. That, sir, I cannot answer without referring to my books.

282 Q. Tell me, as well as you can recollect; you must have some general idea of the amount of business carried on.

A. When we leased from Dorson we did not do the same extent of business that we do now, not by a great deal.

Q. Give me a general idea of your business under Dorson.

A. Well, sir, I think we used to ship about 30,000 tons—somewhere about 30,000 tons; somewhere about that.

Q. That is, from the inception of the lease under Dorson?

A. Yes, sir.

Q. Down to the purchase by Gordon?

A. Yes, sir. It would vary, of course, year by year; sometimes a little more, sometimes a little less.

Q. Do you think it would average, however, 30,000 ton a year?

A. Yes, sir.

Q. Was not the coal business very much stimulated by the war?

A. Yes, sir.

283 Q. Before the war what was the condition of business compared with what it was afterwards?

A. I was not in the business before the war.

Q. When did you first go into the business?

A. In the beginning, part 1861.

Q. In 1861?

A. Yes, sir.

Q. Has Agnew to make a lease from Gordon?

A. No, sir.

Q. How does he rent; by the year?

A. Yes, sir; by the year. Well, when I say he has no lease, I mean to say that he had the privilege, when he first rented from Mr. Gordon, of renting by the year, at $1,350 per year, with the privilege of retaining the wharf for five years; so you might term that a lease.

Q. Undoubtedly that would be a lease.

A. He has the privilege of retaining for five years.

Q. From what time?

A. From the time the property was transferred from Dorson to Gordon.

284 Q. Have these five years run out yet?

A. No, sir.

Q. How is this property occupied by you improved?

A. It has on it a large brick building that is about 4½ stories in height. I should think that the building is about 80 feet in length, by about 30 deep. That is according to my recollection. I am not now speaking of the actual knowledge of the measurement.

Q. Any other improvements?

A. There is the wharf improvement, what we would call material for shipping coal, the trestle-work; that belongs to the property. That is a portion of the property rented. It belongs to the property. The trestle is used for shipping coal.

Q. The trestle, however, was placed there by the tenant, was it not?

A. Yes, sir; it was placed in the first place by Mr. Dorson himself, & sold with the property, I believe. Mr. Agnew has, according to his terms, to keep that in repair.

285 Q. Any other improvemtnes?

A. No, sir. There is the wharf in front of the river. That is improved. We put a new wharf there.

Q. Who put up the new wharf?

A. In the first place, Mr. Dorson put it up.

Q. Mr. Agnew has to keep the wharf in repair now?

A. Yes, sir.

Q. Is that his present arrangement?

A. Yes, sir. Mr. Dorson formerly kept it in repair.

Q. Has Mr. Agnew to keep it in repair under his lease?

A. The lease with Mr. Gordon?

Q. Yes, sir.

A. Yes, sir.

Q. Have you a copy of the lease to Gordon from Agnew?

A. No, sir.

Q. Do you know who has?

A. Fitch & Fox have a copy of the lease; they are his agents here.

Q. When Agnew rented the property from Gordon, for what purpose was the building on it used?

286 A. At the time Mr. Agnew leased the property from Mr. Dorson it was used as a soap factory—grease and soap factory.

Q. I did not ask you as to the time of the lease from Dorson, but the time of the lease from Gordon.

A. It has been used since then as a portion of our office. We have the privilege of renting all the other building. We rent the entire from Mr. Gordon.

Q. You were, then, entitled to the rents of this building?

A. Yes, sir.

Q. From the time of the renting from Gordon, by whom has the building been used?

A. It has been used principally by our own offices; sometimes we have stored grain in there, and received rent for the storage of the grain. We have the entire control of the building.

Q. Have you any tenant to that building?

A. No, sir; only as they may store grain there for the time being.

287 Q. It is, then, an empty building, suitable for storage or any other purpose?

A. Yes, sir; for storage. We use a portion of it as a carpenter-shop for our own wharf, portion of it as our office; the other portion is unoccupied.

Q. Is vacant and unoccupied?

A. Yes, sir.

Q. In what state of repair was that building at the time of the lease from Gordon to Agnew?

A. At the time of the lease from Gordon to Agnew it was in tolerable good repair. Formerly, during the lease of Dorson, the building had been burned—it had caught fire—and Dorson refitted it up, put in new beams and new floorings to each of the stories.

Q. How is it you have never rented any portion of that building?

A. Well, parties would apply to us to rent the building for different purposes; we did not approve of the business that they were going in, and therefore we did not care to have them about us. We would rent if we could get a suitable tenant.

288 Q. What is the cost of keeping the trestle-work in repair?

A. That is rather a broad question. It would depend upon circumstances as to what injuries might be done. We cannot tell. It is of course the average wear & tear of trestle-work.

Q. What is the cost of keeping the wharf in repair?

A. Well, this year, I suppose it would be $200 very near, or less.

Q. Would it not cost more—you are familiar with this business—to keep the trestle-work than the wharf in repair?

A. When I speak of the wharf and trestle-work I include them all together, the entire property, trestle-work & wharf. I include all under the head of wharf.

Q. Well, including all, tell me what has been the average cost per annum since the renting from Mr. Gordon of keeping the wharf and trestle-work in repair?

A. That I cannot tell you, sir.

Q. Can you approximate to it?

289 A. No, sir, I cannot; it has varied so much during the past years.

Q. Would not your books show?

A. Yes, sir.

Q. Will you consult them & let me know?

A. Yes, sir.

Q. The building on your property was never occupied as a mill, was it?

A. It has not been occupied as a mill since Mr. Dorson has leased it.

Q. It has not the appurtenances of mill property? It has no water right attached to it, has it?

A. That is a matter of dispute. It was always a matter of dispute between Mr. Dorson and the party from whom he leased—Dorson contending that he had the right of water to that property, and it was a question between him and the canal company, but it has never been decided—Dorson always contending he had the right.

Q. In point of fact, however, there is no water right actually exercised with the property?

A. No, sir.

290 Q. Now, in estimating the value of the Young property you say that as compared with the value of your property it was worth in the summer of 1871, $8,000.

A. Yes, sir.

Q. Do you mean to say that in your judgment that was the value of the Young property at that time irrespective of any comparison with your property?

A. Well, that I do not know, sir; I do not exactly understand your question.

Q. I will state it more plainly. You have testified in your examination-in-chief that the value of the Young property—rating your property as of the value of $10,000—was $8,000?

A. Yes, sir.

Q. Do you mean to assert that the value of the Young property irrespective of any comparison with yours, but according to its intrinsic worth, was only $8,000 in the summer of 1871?

A. Well, I would have to form my opinion on a comparison. I could not form my opinion with the property in the immediate vicinity
291 of that property, and I form my opinion by comparison and by comparison alone.

Q. You form your opinion comparing the Young property with your property?

A. Yes, sir.

Q. And that alone?

A. Yes, sir.

Q. And your comparison I understand to be this: As your property is larger than the Young property——

A. Yes.

Q. And there is a right of purchase for $10,000, therefore you think the Young property worth no more than $8,000.

A. Yes, sir; judging of the value of the Young property from the measurements and facilities that we had in our property—his facilities in extent of property is not as great as ours, and therefore the property would not be worth so much. We have more frontage upon the canal than he has. We also have the property below Water street
292 which he has not, the Young property going only to Water street, our property extending over to Water and down to the river, so that fully more than one-half of the actual measurement of our property is below Water street, and Mr. Young's property, so far as I understand it, only extends to Water street.

Q. Well, considering that the Young property is entirely cut off from the river, stopping as it does at Water street, is not your valuation of $8,000 a very high one?

A. Yes, sir; too high.

Q. Considering that the Young property is cut off from the river by Water street, or rather stops at the north line of Water street, and is smaller in extent than yours with less frontage on the canal, and considering also the respective improvements, was Young's property worth more in the summer of 1871, as compared with your property, than, say, five or six thousand dollars?

A. Well, to understand that you would have to take into con-
293 sideration that a portion of that property was rented from whoever owned it, I do not know who; a portion of that property was

rented for the purpose of shipping coal over, and they had the use of the width of one street, and in my estimation of $8,000 I included the privileges that they had from the street that really do not belong to the Young property.

Q. Well, then, that would go still farther to depreciate the value of the Young property?

A. Yes, sir.

Q. Now consider the further element that the Young property involved the use of a street without authority of law, then I would ask whether $5,000 would not be a large valuation for the Young property in the summer of 1871.

A. Compared with our property, it would, sir; $5,000 would be.

Q. A large valuation?

A. Yes, sir.

Q. So I supposed.

294 A. Taking those privileges they had in connection with it, I put it all in the amount of $8,000, and $8,000 would be considerably over the amount; $5,000, compared with ours, would be a fair valuation of it at that time.

Q. A full valuation of $5,000?

A. Yes, sir; compared with ours.

Q. Compared with yours.

A. Yes, sir.

Q. Are you not led to the conclusion that your process of getting at the value of Young's property by comparison with yours is an erroneous process?

A. In what regard, sir? I do not understand you.

Q. Why, in this regard: Here is a piece of property that sells for $13,900. That property, according to your valuation, was worth, as I understand, $5,000, and that that would be a large price.

A. You asked me the question at the time we leased from Dorson.

Q. No; I did not ask you the valuation at the time you leased from Dorson; that question has not been asked. I did not ask you

295 the value of the property at the time of Dorson's lease; I asked the value of the property in the summer of 1871, based both upon its intrinsic value and upon the comparison which you had instituted betwixt the Young property and your property.

A. Yes, sir.

Q. Have you now any further answer to make in regard to that?

A. No, sir.

Q. Now, irrespective of any comparison between your property and the Young property, you state your opinion that the latter was worth no more than $5,000 in the summer of 1871?

A. Well, I believe if it would have brought more Mr. Young would have paid more for it, but the purpose for which I would have used it, I would not have given more than that amount for it.

Q. You would not have bought it at all shut off from the river, would you?

A. It would be useless without the river front.

296 Q. With your knowledge and experience of property in that locality, have you no idea of the value of this Young property in the summer of 1871?

A. Well, my ideas of it would go as to how far it would be valuable to me. I presume Mr. Young would go as to the valuation of the property how far it would be of value to him. I might say that I would not

give $5,000, and Mr. Young give $14,000. It might not be worth $5,000 to me, and it might be worth more than $14,000 to Mr. Young.

Q. Am I then to understand that you only estimate the value as to what the property would be worth to you?

A. Well, in connection with what I could buy our own property for.

Q. Then you have no idea of the value of the Young property irrespective of its value to yourself, to be used and occupied for your purposes?

297 A. No, sir, only as our property could be bought for $10,000, and that as the Young property was less in extent than ours, that it could be bought for less in proportion.

Q. You have no idea, however, of the value—the market value—of the Young property irrespective of its peculiar value to you for your business?

A. No, sir; only by a comparison with what our property is worth, or what it could be bought for. The property in that vicinity is not often sold; it does not often change hands.

Q. Now you have recurred several times to the fact that your property can be bought for $10,000?

A. Yes, sir.

Q. Now, have you not stated to me that the right to buy for that amount was a right that occurred before 1861?

A. Somewhere in that section. That was the time. The lease stated in it that it could be purchased at any time for that amount. The lease would show that.

298 Q. In estimating the value of property in the summer of 1871, do you think it a fair mode of ascertaining such value to take a value put upon property before 1861, or ten years before?

A. Well, property is worth more now than it was then.

Q. Was it not worth much more in 1871 than in 1861?

A. Yes, sir.

Q. Then why have you instituted a comparison between the Young property sold in 1871 and the valuation put upon your property in 1861?

A. Because the property owned by Mr. Young now has been divided. It only extends to Water street, and the lower portion of the wharf is cut off entirely from the upper portion.

Q. That does not explain the error into which you have fallen. I want to know why you undertake to assume that the value of your

299 property is $10,000. Do you not know such value to be largely over that amount?

A. I do not suppose to day it could be bought outside from the party who leased the property for $10,000.

Q. Of course not; nor for 20, could it?

A. Well that I do not know, sir.

Q Do you know for what it could be bought for, the covenant fixing the purchase money at $10,000?

A. I do not know.

Q. Have you any idea of the market value of property in this locality? I do not want any comparison.

A. No, sir; I have not.

Re-examined by Mr. JONES:

Q. Is there any market value? Has there been any sales there that you know of lately?

A. None that I am aware of.

Recross-examined by Mr. DAVIDGE:

300 Q. Do you mean to say there can be no market value of property without sales?

A. I do not mean to say that. Property is valued, I presume, according to the use for which it is applied, and Mr. Young would value his property for his own use much more than I would value it for my use. Property is valued according to the party using it.

Q. Then, so far as you know, the value of property is fluctuating according to the uses and purposes of different parties and irrespective of any market value?

A. I do not know of any market value there.

JNO. SPENCER.

Sworn & subscribed to before me this 8th of March, 1875.

J. J. JOHNSON,
Exam'r.

301 ROBERT P. DODGE, of the city of Georgetown, aged fifty-seven years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Mr. Dodge, please state your age, place of residence, and occupation.

A. My age is between 56 and 57; if I live until the 1st of Sept. I will be 57; I reside in Georgetown, and my occupation is that of a real estate agent.

Q. You were formerly in the milling business?

A. Yes, sir.

Q. At what place?

A. Welch's mill, east of Fayette street; corner of Fayette and Water.

Q. Do you know the property called the Mark Young property?

A. Yes, sir.

Q. Where is that located in respect to the property in which you were interested?

302 A. Immediately west of Fayette street.

Q. Mr. Dodge, do you know the extent of the Young property, or about the extent of it?

A. About 125 feet on the canal and Water street, with a depth of some 50 or 60 between the canal and Water street.

Q. Are you familiar with values of property in that neighborhood?

A. I used to be some 15 years ago.

Q. Well, have you not kept the run of the valuation up there since—do you not live in Georgetown?

A. Oh, yes.

Q. I want you to state to the best of your opinion and judgment the value of the Mark Young property in the summer of 1871.

A. Well, I should have judged it to have been worth 12 or 13 thousand dollars.

Q. You have lived in Georgetown all your life, have you not, Mr. Dodge?

A. Yes, sir.

303 Cross-examined by Mr. DAVIDGE:

Q. Mr. Dodge, you say you used to be familiar with the value of this property about 15 years ago?

A. Yes, sir.
Q. At that time you were in the milling business, were you not?
A. Yes, sir.
Q. When did you enter into the real estate business?
A. About the year 1869, I think.
Q. Did you carry on milling until that time?
A. No, sir; until 1861.
Q. In the interval, what did you do?
A. From 1861 to 1866, I was paymaster.
Q. Since you have been in the real estate business has there been anything to inform you particularly as to the value of this property between Water street and the canal?
A. I think not definitely, sir.
Q. For coal purposes or otherwise?
A. No, sir.
304 Q. I know your transactions as a real estate agent have been very large, but they have not embraced the buying and selling of any of this property between Canal and Water street used for coal purposes.
A. No, sir.
Q. Then your estimate of value is based upon your acquaintance with the property in that locality and prices when you were in business as a miller?
A. Well, yes, sir; partly on that account and partly on account of the enhanced value of property since then.
Q. But you never have had occasion to fix or to ascertain the value of any other property between the Canal and the river used for coal and milling purposes since you were a real estate agent?
A. Some time about 1865 or 6 I had occasion to know of the value of property west of that, west of Tenney's Mill, between that and the aqueduct.

305 By Mr. JONES:

Q. Who was that sold to?
A. It was sold to the coal company; I can tell you about it if you desire.
Mr. DAVIDGE. I do not care to know about it.

By Mr. JONES:

Q. State all your information about it.
A. The same front on the canal with an additional front on the river of some 66 feet, and it sold for $20,000.

By Mr. DAVIDGE:

Q. Who bought it at the sale?
A. The Borden Company; it was a private sale.
Q. Is that the only transaction you know of?
A. Yes, sir; that is the only transaction that I know of since 1865 or 6.
Q. Since 15 years ago?
A. No, sir; it was in the year 1863. It may have been—I think it was 1862 probably that I sold the mill to Welch & Herr.
306 Q. Since 15 years ago is there any other transaction to acquaint you with the value of property in that locality that you remember?
A. Not that I remember.

By Mr. JONES:

Q. State the extent of the property, the improvements upon it and the price of the Welch and Herr mill that you mentioned as having sold.

A. I think it had about the same front on the canal with the same width to the channel of the river as Mr. Young's.

Q. And the improvements?

A. It had a 4 or 5 story mill upon the whole front. The lot was 126 feet front, and was covered with a mill to Water street.

Q. How was the mill used? Was it for the purpose of a flour, plaster & corn mill?

A. Yes, sir.

Q. What did it sell for?

A. $40,000. There was a warehouse on the wharf between Water street and the river.

307 Q. How much deeper was that property between the canal and the channel than the Young property was, if continued to the river?

A. From Water street to the channel?

Q. No; from the canal.

A. Well, the street runs diagonally; Water street and Bridge would meet above the aqueduct. I could hardly tell you the difference. The diagonal lines on Water street in reference to lots are just in that way. (Here the witness pointed out the manner in which Water street lay on a small plat.)

Q. How much deeper between the canal and the Potomac River do you think it is?

A. I should say about 15 or 20 feet.

Q. What is the comparitive value of the improvements on the property you sold to Welch and Herr with that on the Young property?

A. Well, I suppose of 5 or 6 times, at least.

Q. I asked you the value of this property in 1871. You said between 12 & 13 thousand dollars. I wish to have you state the grounds upon which you based that estimate. Have you seen the property lately?

308 A. I know the property has been in a rather dilapidated condition for a great many years, and I should judge that its rental, being an isolated property, could not be more than $1,000 a year or $1,200. The property was entirely cut off from the river so that it could hardly be used for any other except milling purposes. In addition to that, it is surrounded by the coal company's wharf, which throws coal dust and makes it, even for milling purposes, bad.

By Mr. DAVIDGE:

Q. You think, then, that the Young property would be much more valuable if not cut off from the river?

A. Decidedly.

Q. Your reason for that opinion, I presume, is that it would be more available for the coal business?

309 A. Yes, sir; and in addition to that for milling purposes it would be more accessible for grain without carting it to & from all parts of the town.

Q. In 1862, I believe, the shipment of coal had not developed much, had it, Mr. Dodge?

A. Oh, yes, sir; we had rented the Borden Company the wharf as far back as 1854 or '55; Capt. Brown and myself owned that property;

we rented it to the Borden Company; I forgot what year it was, probably 1854.

Q. The business of shipment of coal was immensely developed by the war, was it not?

A. Well, to a much greater extent than it had been. Mr. Ray's dock was in operation in 1856; Mr. Ray built that trunk down to Water street. Mr. Duval had experimented as far back as 1855 or '56 by running tubes in the bottom of the boat to let the coal out; he had large iron tubes run up through the boat, but he found it would not answer.

310 Q. Mr. Dodge, I want to ask you whether you have ever known in your whole life such a period of universal depression in respect to the values of real estate in this District, universally, as in 1862?

A. No, sir; everything was exceedingly depressed at that time, as it was the war time.

Q. Would, in your opinion, any sale made in 1862 tend in any manner to throw light upon any property in 1871?

A. No, sir; except by comparison; I suppose the Young property at that time, in my judgement, would not have brought more than 5 or 6 thousand dollars.

Q. In your estimate of value of the Young property do you include the water right?

A. No, sir; I do not know much about that.

Q. You think it was worth in the summer of 1871 between 12 and 13 thousand dollars?

A. I should judge so, sir.

Q. And you think it would be worth much more if not cut off from the river?

311 A. Of course that would make it additional property and make it available for coal purposes, and now it is not.

Q. And your estimate of between 12 and 13 thousand dollars does not include any water right attached to the property?

A. I am not aware as to what that is.

Q. You do not know the extent of that water right?

A. No, sir.

ROBERT P. DODGE recalled.

Mr. DODGE. In relation to the water right I took it for granted that the water right was attached to the property, otherwise it would be no mill, but apart from that if the same front was carried to the river the whole thing would be worth about $20,000.

By Mr. JONES:

Q. Then in your valuation of $13,000 you included water enough to drive the mill?

A. Yes, sir.

312 (The question was objected to by counsel for the plaintiff as leading.)

By Mr. DAVIDGE:

Q. What water-power did you estimate as attached to the mill?

A. My recollection was that we had about 200 inches; I forget whether it is 200 inches exactly. I used to recollect all about it. It was a great many years ago.

Q. You did not value the property, then, as Mr. Darnielle says he valued it, by the ground and the machinery?

A. No, sir; I included the whole thing together in my mind of what I had previously known of the property and what I thought it ought to be worth, comparing it with the other property.

Q. Now, take the water privilege alone. Suppose there are 200 inches of water, for the sake of example, attached to the property; what is that water-right worth now per inch?

A. I am not informed at all as to its present valuation.

313 Q. What was it worth when, as a miller, you were familiar with that?

A. It was $2½ per annum per inch, the rent paid to the Chesapeake & Ohio Canal Company.

Q. You know, generally, that the price has increased, although you do not know the extent?

A. I take it for granted that all values have increased; that has gone with it.

Q. You have no information, however?

A. None at all.

Q. As to the growth of the value of water-power in particular?

A. I have not.

ROB'T P. DODGE.

Sworn & subscribed to before me this 2nd day of March, 1875.

J. J. JOHNSON,
Exam'r.

314 PHILLIP A. DARNEILLE, of the city of Georgetown, aged thirty-eight years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Please state your age, residence, and occupation.

A. My residence is Georgetown; my occupation is that of a stock-broker; I was born on the 27th of January, 1836.

Q. Are you familiar with the valuation of real estate in Georgetown?

A. Well, I know pretty well about it.

Q. Do you know the Young property?

A. I do.

Q. State, to the best of your knowledge and judgment, the value of that in 1871.

A. I was at the mill the other day, and I examined the property. Mr. Young repeated that the property fronted, I think, 126½ feet, by 65 feet deep, the street, I think, cutting off a part of the mill property.

315 The street runs through it. I valued the property. My idea of the valuation of the property was about $13,000, under those metes and bounds.

By Mr. DAVIDGE:

Q. The property would be worth much more if not shut off from the river, would it not be?

A. Most assuredly, I should think. Would have more ground thereby, therefore the property would be more valuable.

Q. Would there not be the further value of the availability for carrying on the business of the shipment of coal?

A. I should think so, sir.

Q. What do you think that property would have brought in the summer of 1871?

A. Well, I do not think it would have brought more than—I cannot

say, but I think I would have to confine myself as to what the value of property is——

Q. At the present time?

A. Then or now. It was worth $13,000.

316 Q. You estimate how many feet on the canal?

A. 126½ by 60 feet; running to Water street.

Q. Do you include in your estimate any water right?

A. I know nothing about that.

Q. You did not estimate it, then, as property valuable for a mill with a water-right or motive power attached, did you?

A. My valuation was with regard to mill property, knowing nothing at the time of any water-right that might exist.

Q. Your valuation, then, was a property that might be used for milling purposes, but you do not take into account the fact that there was attached to the property a valuable right to water as a motive power—I mean an existing right?

A. My valuation is that of a mill property.

Q. What do you mean by your valuation as that of mill property? What do you mean by that?

A. Exactly what I say; nothing more—mill property.

317 Q. But I cannot understand you. I ask whether in placing the value of $13,000 upon this property, you included in that valuation any water-right at all?

A. Oh, no; I know nothing about water-right.

Q. Suppose there was a water-right attached worth, we will say, for illustration, 5 or 6 thousand dollars, then it would be worth that much more in your valuation, would it not?

A. What do you mean by water-right?

Q. The right to draw so much water from the canal as a motive-power.

A. Well, I know very little about such things. My inference is that you would, of course, have to have water-power to have a mill.

Q. Well, the value of water-power did not enter into your valuation at all?

A. It did not. I know of no particular water-power. I speak of the value of the mill and the ground and the machinery.

Q. How did you estimate this mill was to be turned? How did you suppose this mill was to be turned?

318 A. By water from the canal.

Q. How was the water to be obtained?

A. Well, I know nothing about it. I have heard that they charge for water-power, but, not being acquainted with it, I of course know nothing about it.

Q. That did not enter at all in your valuation?

A. I had nothing to do with the water-power.

By Mr. JONES:

Q. You saw that it was a mill?

A. I did. I said it was my estimation of a mill property.

Q. You supposed there was a motive-power applied with it?

A. I did.

Q. You went through the mill?

A. I did. I went through the whole mill.

Q. And that was the basis of your estimate?

A. Yes, sir.

Q. You supposed it was a mill that had a right to run?

319 A. Yes, sir.

Recross-examined by Mr. DAVIDGE:

Q. Did you suppose it was a mill that had a right to run without paying for the water?

A. Well, I presumed it had the advantage of a canal, not knowing about the payment of the water-power.

Q. Then in making your estimate, at what price did you put the water-right?

A. Well, I know nothing about the value of the water at all, more than I presumed that the mill was entitled to the water to a great extent, but, at the same time, I never heard that there were extra charges for water there. I did not know but that the water may be given.

Q. Do you know the value of water along the canal?

A. No, sir.

Q. Now state to me—we might as well clear this thing up—state to me in what manner you reached this valuation of $13,000?

320 A. I thought the property, the mill & the ground—that is, I put the ground at about $100 a front foot, along with the machinery.

Q. That would be about how much?

A. About $7,000. My estimation of the machinery—I know very little about machinery—but my idea of the machinery and the buildings were about $6,000, making my valuation $13,000, at what I believe the property to be worth.

Q. Who asked you to go there and value it?

A. Mr. Young.

Q. Have you ever had occasion to inform yourself as to the value of property on the canal used for coal or milling purposes except on this occasion?

A. I do not know that I have.

Q. Then you have no experience whatever touching the value of this property or other property in its locality used for coal or milling purposes?

A. No, sir.

Q. How long have you been a real estate broker?

321 A. About 5 or 6 years.

Q. In all that time it has never fallen to your lot to be acquainted with the value of this peculiar description of property, valuable for milling and coal purposes?

A. No, sir.

P. A. DARNEILLE.

Sworn & subscribed to before me this 2nd of March, 1875.

J. J. JOHNSON, *Ex'r.*

322 DANIEL L. SHOEMAKER, of the city of Georgetown, aged forty-two years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Please state your age, residence, and occupation.

A. I am about 42, I guess; I reside at 42 1st st., Georgetown; and I am a miller by occupation.

Q. How long has your occupation been that of a miller?

A. About 15 years.

Q. Are you familiar with the valuation of mill property and of other property in Georgetown, on Water street?

A. Well, tolerably so. I have made no valuation of any piece of property there, but I have some ideas of the value of it.

Q. Do you know the property called the Young property?

A. Yes, sir; very well.

323 Q. Do you remember of its being sold to Mr. Young?

A. Yes, sir; I suppose it was two or three years ago.

Q. From whom did you hear of the sale?

A. Mr. Tom. Bradley told me that he had sold it to Mr. Young.

Q. That is your first knowledge of it?

A. Yes, sir; a few days after he sold it.

Q. How much did he tell you he had sold to Mr. Young, or what property did he state to you he had sold?

(Objected to by counsel for the complainant as heresay, and because, if intended to contradict the testimony of Mr. A. Thomas Bradley, a proper foundation has not been laid.)

Q. Where did this conversation occur with A. Thomas Bradley?

A. Here, on the corner of 4½ street and Louisiana avenue, at his brother's office.

Q. When?

A. A few days after the sale.

Q. What did he tell you he had sold?

324 A. He told me he had sold Mr. Young's mill, between the canal and Water street. I understood afterwards that it included the warehouse adjoining or close to it. There is a space between it.

Q. What did he say to you was the price?

A. He told me he had sold it for $14,000, and asked me what I thought of the sale.

Q. What was your reply?

A. I told him I thought it was very well sold; a very good price.

Q. And he responded what?

A. That he was very glad to hear——

(Objected to by the counsel for complainant as leading.)

Q. What did he respond?

A. He responded that he was very glad to hear me say so.

Q. Now, Mr. Shoemaker, what is your best judgment of the value of the Young property in the summer of 1871? What do you mean by saying that it was a very good price?

325 A. I thought it was then, and have no reason to change my opinion now. I think it is still a very good price.

Q. Do you know the property thoroughly?

A. Yes; I think I do.

Cross-examined by Mr. DAVIDGE:

Q. Would not the price of this property be largely increased if it was valuable for coal purposes by means of some connection with property on the south of Water street, and between it and the river?

A. Most assuredly, not only for coal but for mill purposes.

Q. You say that Mr. Bradley told you he had sold a mill, and, as you understood, the warehouse near the mill?

A. I asked him the question myself, Mr. Davidge, at the time, if that included the wharf. He said "No." Then I remarked I thought it was well sold.

326 Q. What I am alluding to is, that as I understand your testimony, he said he had sold the mill property, and, as you understood, the warehouse?

A. I understood that afterwards.

Q. When did you understand that afterwards?

A. A few days after that I met Mr. Young and asked him, and he made some remark about this mill, and he included that warehouse. I do not think Mr. Bradley said anything, except Young's mill, if I recollect. Then I said I thought it was well sold, and he said he was very glad to hear me say so.

Q. In the conversation between you and A. Thomas Bradley there was nothing said by the latter in reference to the warehouse or any other property than Young's mill?

A. No, sir; I am satisfied there was not.

Re-examination by Mr. JONES:

Q. What did Mr. Bradley say he had sold to Mr. Young?

327 A. He told me he had sold Young's mill. It goes by that name—Young's mill.

Q. What boundaries did he mention?

A. He did not mention any boundaries at all, except that it did not include the water-front or the coal-dock.

Q. Did it include all but the wharf?

A. He did not say, Mr. Jones. He simply remarked that he had sold the Young's mill a day or two before that.

DAVID L. SHOEMAKER recalled:

By Mr. JONES:

Q. I wish you would give in detail your reasons and the basis of your estimate of the value of this property at $13,900—of the Young

328 property. State in full how you arrived at it.

A. Why, I think it was worth that much money.

Q. As to that valuation of it?

A. I think it was its full value. I think it was worth that much money, because it was a mill entitled to draw the water from the canal and having the right to pass the waste down this coal dock; because if you deprive it of the water-power, stop it from the mill, then I do not suppose it is so valuable unless in connection with the coal dock.

Q. What do you think would be its value without the water-right?

A. I could hardly tell what I would regard the value of the water-power. It would simply be a little strip of ground between Water street and the canal.

Q. You cannot state your estimate of the water-right?

A. No, sir. The reason why I stated it was a good price is

329 that I can go above the aqueduct a short distance and rent ground for $2.00 a front foot per annum and put upon it a mill for 5 or 6 thousand dollars that would grind as much meal as Mr. Young's mill does in a year; and I could also rent water. That is the way I based my idea of the value of it. Certainly if you take away the right to let the waste pass down through the coal dock I would not regard it as very valuable.

Cross-examined by Mr. DAVIDGE:

Mr. Shoemaker, you say that irrespective of water-right attached to this property, and the privilege of conveying the water over property lying south of Water street into the river this property would be of comparatively little value. Now, to what extent would the value of property lying south of Water street and between that street and the river, and embracing the right of wharfage be effected by sepa-

rating from that property, property lying like this on the north side of Water street?

A. Well, I think it would injure it very materially if you deprive it of its connection with the canal. If you deprive it of the right of way from the river to the canal, of course you injure the other part of it. For coal purposes the property south would be entirely killed.

Q. I do not see what you could do with it unless you would pay tribute to the party owning the property next to the canal. In the case that I put, and in view of the trade of Georgetown, and the condition of things there in a commercial point of view, would not the value of the water-front be almost entirely destroyed?

A. For coal purposes do you mean or for any other purpose?

Q. I want to know for any purpose?

A. It would be just as good as any time. It would be about as good as it ever was for landing goods from a vessel; but if you use it as a coal-dock you must have some way of getting the coal from the canal to the river. I should suppose if you are deprived of the right of way by the other property you would injure it very materially.

Q. Is not the chief value of water property in this locality its adaptation to use for coal purposes?

A. The chief use?

Q. Yes; the chief use.

A. Oh, no, sir; I suppose the coal interest is very considerable up in Georgetown, but the mill interest is very great also.

Q. That is not what I wanted to know.

A. You asked me if property in that locality was not chiefly used——

Q. I wanted to know how far the value of the property fronting on the river would be depreciated by destroying its connection with property fronting on the canal?

A. I think it would be very materially affected; injured certainly to the same extent that the property on the north side would be by depriving it of the right to pass the water into the river.

Q. Then, as I understand it, in your opinion, these two pieces of property are mutually dependant upon each other?

A. I think so.

Q. And to dispose of either without reserving the control of the other tends most materially to diminish the value of the property retained?

(Objected to by counsel for the defendant.)

A. I would have to answer that in a general way. If you use Mr. Jones' property as a mill without the right to pass away waste water you cannot make a mill and it would destroy it as a mill. If you deprive the coal property of the right to pass over Mr. Young's property in order to deposit the coal on the dock for shipment, you must necessarily injure the value of it, because how would you get the coal?

Q. Are wharves in that locality much used for any other purpose than the shipment of coal?

A. I think there is but one wharf used for any other purpose, and that is Welch's; they use it for the shipment of flour. The others are used for coal purposes and none other.

By Mr. JONES:

Q. Are not these parcels of property the Young property and the property you call the coal-dock now separated by a public highway?

A. Yes, sir; Water street passes right through the property.

Q. Do you have to pass that street in going to your mill?

A. Yes sir.

334 Q. Then if the use of Water street was refused the coal property or dock, as you call it, would be worthless for that business, would it not?

A. Do you mean to say that if the corporation was to refuse to allow me to put the trestle work over it?

Q. If any *any*body should refuse?

A. It would be worthless as a coal-dock.

D. L. SHOEMAKER.

Sworn and subscribed to before me this 22d of February, 1875.

J. J. JOHNSON, *Ex'r.*

335 RICHARD A. EDMONSTON, of the city of Georgetown, aged forty five years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Mr. Edmonston, please state your age, residence, and occupation.

A. I am 45 years of age; I live on 62 High street, Georgetown, and by occupation I am a bricklayer.

Q. Do you know the Young property in Georgetown?

A. I do, sir.

Q. State if at Mr. Young's instance you performed any work there.

A. Yes, sir; I tore down the front of the mill; that is, as far as the brickwork was concerned; I did the brickwork of the mill fronting on Water street.

Q. And replaced it?

A. Yes, sir; and replaced it. I tore it out and rebuilt it.

336 Q. What was the cost of that improvement, Mr. Edmonston?

A. Well, I never kept any account; I had a contract with Mr. Young. My impression is it was $360 or $365—somewhere about that. I have no account; it was a very hurried thing. Mr. Young told me to go and do the work, & I did it. I think I closed his mill up in three or four days.

Q. What was the condition of the mill when you commenced the work?

A. It was in a very bad condition; these figures that I gave are only in regard to the brickwork; the basement, you know, is stone.

Cross-examined by Mr. DAVIDGE:

Q. Had you a written contract with Young?

A. No, sir; just as I have stated. I did the work hurriedly.

Q. Have you a bill or receipt?

A. I gave one to Mr. Young.

Q. What was the amount of your bill?

337 A. I can only approximate; I think about $360.

Q. Can you not recollect?

A. Not positively.

Q. Would not your books show?

A. I have no books.

Q. Mr. Young knows, however, does he not?

A. I think he does; I suppose he keeps his accounts.

Q. You gave him a receipt, as I understand?

A. I did, sir.

Q. How did he pay you, by check or money?

A. I think he paid me by check.

R. A. EDMONSTON.

Sworn & subscribed to before me this 27th of July, 1875.
J. J. JOHNSON, *Ex'r.*

338 L. T. CARTWRIGHT, of the city of Georgetown, aged forty-seven years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. State your age, residence, and occupation.

A. My age is 47; I am a house carpenter and builder, and my residence is on the northeast corner of Congress & Beall street, Georgetown.

Q. Do you know Mr. Young's property?

A. Yes, sir.

Q. State what work you did there for Mr. Young?

A. I built a corn-crib for him in 1868 on the west side of the mill.

Q. How much was your bill?

339 A. I did the work by the day, and Mr. Young furnished the material. I have not the bill; I burned or destroyed a great many of my papers for the last two or three years; for the last six months I destroyed some; I only keep a kind of time-book.

Q. How much do you think it came to, material and labor?

A. I should think between 7 and 8 hundred dollars.

(The counsel for complainant objected to the value of the corn-crib in 1868.)

Q. Who paid for it?

A. Mr. Young; that is, he paid me for the labor.

Q. He furnished the material?

A. Yes, sir.

Cross-examined by Mr. DAVIDGE:

Q. Have you no means of fixing with a certainty the price paid you by Mr. Young for building this corn-crib?

340 A. I have some memoranda, but I do not think it is all; I have a memorandum of about $147; but it is more than that, I am sure, because I think the work came now and then. I had two time-books at the time, and I do not think the time I have in the leaf I have is all the time that was made on the building. I should judge it is worth about 240 or 50 dollars, the work; the balance was in material, in lumber and iron that was used.

Q. I think you said he paid you 7 or 8 hundred dollars?

A. No, sir; I said the work and everything was worth between 7 and 8 hundred dollars.

Q. How much did he pay you for your work, to the best of your recollection?

A. I cannot state positively; I gave Mr. Young a bill and receipt. I cannot state with any certainty, but the time that I have, that I said he

341 was charged with—at least where it breaks off—was about $147, but I think that it came to more money than that; I think to about $250.

Q. But according to the only memorandum you have the work only came to $147?

A. Yes, sir; according to the memorandum I have.

Q. Have you this memorandum in your possession now?

A. Yes, sir.

Mr. JONES. With you?

The WITNESS. Yes, sir. (Pulling a small memorandum book out of his coat pocket & exhibiting it to Mr. Jones.)

Q. (By Mr. Davidge.) How did Young pay, by check?
A. Well, I cannot say positively; I do not remember.
Q. Who supplied the material?
A. Mr. Young, sir.
Q. Have you ever measured the material in the building, or how did you fix the value of the material?
A. Well, I fixed the value of the material by my own judgment and experience in building.
342 Q. When were you asked to fix the value of the material?
A. I never was asked. Mr. Young simply spoke to me about building and I went there, looked at the place, and he told me where to go and get the material, what I wanted, and I did it.
Q. Where did he tell you to go and get the material?
A. At Mr. Wheatley's.
Q. Then Wheatley's bill ought to show the value of the material, ought it not?
A. Yes, sir. Mr. Young had considerable material of his own, several large posts that he had there, upon which the foundation rests. There were several large posts.
Q. Were there any other material besides these posts?
A. Well, he had other material besides the lumber. He had a great many irons made. I do not know what they cost. I suppose Mr. Young knows.
343 Q. Had he any other lumber besides the posts?
A. Not that I remember at present. There may have been some.
Q. These posts expressly supported the corn-crib?
A. Yes, sir; they were large oak posts, I think.
Q. How many in number—four?
A. I think there were more than that—five or six—I cannot say positively.
Q. That is all the lumber that he furnished from his own source?
A. Yes, sir; that is, of which I have any knowledge.
Q. The rest of the lumber was obtained from Wheatley?
A. Yes, sir.
Q. When did Mr. Young ask you to testify in this case?
A. He did not ask me to testify at all. I did not know anything of it until I was summoned to appear. About twelve months ago,
344 it seems to me, I met Mr. Young on the street and he asked me if I knew what the material cost and I told him I did not know.
Q. This corn-crib you built in 1868?
A. I think so, sir. It was in 1868. That is the date I have on this time-book.
Q. Do you know whether that corn-crib was repaired in 1871 or thereabouts?
A. He strengthened it by putting a beam in the center of the joist, an additional post and iron. He put on a great many irons and tied them on to the mill, that I had nothing to do with and which I saw on after it was done.
Q. Did he not put on a new roof?
A. That I am not aware of.
Q. However, he repaired it to some extent—the old corn-crib?
A. Yes, sir. He must have done something to it because I saw this beam underneath and the additional iron which strengthened it very much.

345 Q. He did not pull down the old crib and put up a new one?

A. No, sir; he put in additional timbers, slats, besides the strengthening of the floor timbers.

Q. But he did not pull down the old crib?

A. No, sir; I do not think he did. It seems to be the same one standing there.

Q. That you built?

A. Yes, sir; I saw it about six months ago, passing along Canal street.

Re-examined by Mr. JONES:

Q. Do you not know that there was a new roof put on?

A. No, sir.

Q. What is the roof on it now?

A. Well, I cannot say. It had a felt roof on; a gravel roof.

Q. Well, if it had a tin roof it would not be the same corn-crib you built?

A. It would be the same corn-crib but not the same roof.

346 Q. But you do not know anything of the roof?

A. No, sir.

L. T. CARTWRIGHT.

Sworn & subscribed to before me this 10th of March, 1875.

J. J. JOHNSON, *Exam'r.*

347 ALBERT C. PRATHER, of the city of Georgetown, aged forty-three years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. State your age, residence, & occupation.

A. My age is 43 years; residence is Georgetown; and occupation, a millwright.

Q. Mr. Prather, do you know Mr. Young's property in Georgetown?

A. Yes, sir.

Q. What have you done to that at Mr. Young's instance?

A. I have done a great deal of work there; repairing the mill and remodelling it.

Q. Since Mr. Young's ownership of it?

A. Yes, sir; I do all his millwright work, and have been all along, nearly ever since he has been there.

348 Q. Do you know how much your bill came to?

A. Mr. Young asked me about a year ago, as nearly as I can recollect, to make a statement and look over my books and see what amount of work I done. I did so; and I went to Mr. Wheatley's lumber yard and got the amount of lumber I used, and as nearly as I can recollect something upwards to $1,500, work and material, we used, came to.

Q. What was the condition of the mill when Mr. Young bought it and when you commenced these repairs?

A. They were in a very bad condition.

(Objected to because the witness says he did work for Young before he made the purchase.)

Q. I want you to confine yourself to since he made the purchase. I want you to state what you have done since that time.

349 A. I put in new burrs, hoops, new elevators, new conveyors, screens, and repaired the water-wheel.

Q. Anything to the forebay?

A. I am not certain whether it was before or since the purchase was made.

Q. Anything to the bolting-chest?

A. Yes, sir; to a large bolting-chest.

Q. How much did all that work come to?

A. Well, sir, as nearly as I can recollect, to the sum of $1,500. That does not include the burrs. Mr. Young furnished the burs himself.

Q. Do you know the cost of those burrs?

A. I think they cost about $300 a pair. I think Mr. Young has put in two pairs of those burs since he purchased the mill; maybe three pair—two or three pair.

Q. The amount that you testified to amounting to $1,500 has been since Mr. Young's purchase?

A. To the best of my knowledge it is.

Q. I want to know how much repairs you put on the water-wheel; how much you did to it?

350 A. I think upwards to $100; just the work of it.

Q. What was left of the old wheel that you put the new work on?

A. Nothing more than the shaft and the centres, and the arms in the rim of the wheel. I put in soling, buckets, and elbows; the work on which cost $100.

Q. Did you put in new bolts?

A. Yes, sir; we put in new bolts in the wheel lately.

Q. Do you know of any repairs or remodelling or alteration that Mr. Young has done to the corn barn since he bought the property?

A. Yes, sir; he got a gentleman, Mr. Thomas, to put in new joist and new gurden, and new posts under the gurden, and build a stone foundation, and also done some stone work inside of the mill.

Q. What repairs, to your knowledge, besides that you did, has Mr. Young made on the property since he bought it; what do you suppose the cost would be?

351 A. Well, I did not do any of the brick and stone work. Other parties did the brick work and tin roof on the corn crib or barn or whatever you term it.

Q. There has been a new roof put on the corn barn?

A. Yes, sir.

Cross-examined by Mr. DAVIDGE:

Q. How long have you been in business, Mr. Prather?

A. I have been in business about 25 years milling and millwrighting together.

Q. You keep books, do you not?

A. Yes, sir.

Q. Ought not your books show exactly what repairs you put on this mill at the instance of Mr. Young since the purchase of the same?

A. The books will show. I mislaid some of my small time-books since the last year. The bill I made out for Mr. Young was correct.

352 Since then I have lost some of my time-books. I have a ledger in which I keep my own time. The time of the men who work for me I do not record in a ledger. I only keep it on a time-book.

Q. But in your books do you not keep account with people who work for you?

A. No, sir; I do not keep any cash account except my own time. Sometimes I have 5 or 6 men employed; sometimes I have no one else but myself. I have a ledger where I keep my time.

Q. If you do work for a man do you not charge him with it?

A. Certainly I charge him with it.

Q. Have you not charged Mr. Young for all the work you did for him?

A. Yes, sir; and given him a bill and receipt for all the work done for him and received all the money.

Q. Then the loss of your time-books would in no manner affect the correctness of your account against Young, would it?

A. No, sir; not if Mr. Young had the bill & receipt it would not.

353 Q. But you do not keep a ledger charging him or anybody else for whom you do work?

A. No, sir; I simply keep little time-books. As soon as one gets full I lay that aside and get another, and the balance on that against Mr. Young that I have got time for, I transfer from the full book to the new one and when I make out my bill I charge accordingly.

Q. But whenever you did work for Mr. Young you rendered a bill, and when he paid you, given a receipt?

A. Yes, sir.

Q. Ought he not to have in his possession the exact evidence of work done by you?

A. He ought to have if he has not mislaid them like I have my time-books.

Q. You say about a year ago he asked you to make out a bill?

A. Yes, sir.

Q. And you made it out for him?

A. Yes, sir.

354 Q. Did you put in that bill items for work and material prior to the purchase of the mill by him or only such as accrued afterwards?

A. Well, as near as I can recollect it is all since he purchased the mill.

Q. You had lost the time-books at the time, had you not?

A. No, sir.

Q. You say as well as you can recollect it was all work and material after his purchase of the mill?

A. Yes, sir; after the purchase of the mill.

Q. When did he purchase the mill?

A. In 1871, I think, sir.

Q. Have you any distinct recollection upon that subject?

A. I think Mr. Young told me about that time, about the time he purchased the mill.

Q. Had you any distinct recollection as to the items you put in this bill of $1,500?

A. Yes, sir; on the water wheel, putting in new burs; making
355 new hoops for the burs; putting in elevators; elevator belts, cups; putting in conveyor and screen.

Q. You do not understand my question. I asked you, are you positive that you put in this bill no work done by you prior to his purchase of the mill?

A. I am not positive about that.

Q. Then you may have put in this bill items of work done before his purchase of the mill?

A. I may have. I do not know exactly the date that he purchased the mill.

Q. Did he tell you the exact date at the time?

A. I do not think I did a great deal of work for Mr. Young before he purchased the mill.

Q. Still you did some?

A. Yes, a little patching work. I put in cog-wheels several times for him; put in wooden cogs in iron wheel.

Q. I understand that all the repairs to the water-wheel done since the purchase amounted to about $100?

A. I think somewhere about that. I think my bill was for work done only.

Q. I speak of work alone.

356 A. Something upwards of a hundred dollars, I think, sir.

Q. That includes the soling, elbows, buckets, and other repairs to the water-wheel?

A. Yes, sir.

Q. You say a little upwards of a hundred dollars. Do you not suppose that $10 would cover all the repairs, the cost of all work done by you, since his purchase, upon the water-wheel?

A. Yes; that might pay for all the work done, but it would not pay for the material used.

Q. Now where did you get the material to do the work on the water-wheel?

A. It came from Mr. Wheatley's.

Q. Did you get it from Mr. Wheatley on the credit of Mr. Young?

A. Yes, sir.

Q. What do you think was the cost of that material?

A. That was included in the bill that I made out for Mr. Young.

357 Q. The $1,500?

A. Yes, sir.

Q. Then that bill included not only the work but the cost of material?

A. Yes, sir. Since I have made out the bill I have done other work there.

Q. How did you get the cost of the material when you made out the bill for $1,500?

A. I went to Mr. Wheatley's.

Q. Then the $1,500 covers all work and all material since his purchase, and may be more?

A. Up to that time, about one year ago.

Q. You know the cost of the material that entered into the work, do you not?

A. I do not know the cost of the material that was used in connection with the water-wheel.

Q. When Young asked you to make out this bill, did he tell you to state the ordinary improvements about the property?

A. He said something about—he said he wanted me to make

358 out a bill for him, that they were trying to dispossess him of the mill; something like that; I forget the exact words now that he used.

Q. Now, as to the repairing of the forebay, tell me whether that was not done the summer before the purchase of the property by Mr. Young?

A. I do not know. I am not able to say, sir, whether it was or not.

Q. It might have been, might it not?

A. Yes, sir.

Q. What work did you do upon the forebay?

A. I put in an entire new forebay from the canal to the water-wheel.

Q. What was the cost of that work and the material?

A. I do not know what it was separately. That was included in the $1,500.

Q. Can you not give me an approximate estimate of the cost of the material and work upon the forebay?

A. Not exactly, I cannot, I suppose.

Q. State it as nearly as you can.

359 A. Between 4 and 5 hundred dollars I suppose it would cost, the work and material.

Q. And that entered into the $1,500?

A. Yes, sir.

Q. Well, what did you do to the bolting chest?

A. Lengthened it about one-half; made it about twice as long as it was; put in an entire new real.

Q. At what cost?

A. I do not know exactly what the real cost. What Mr. Young purchased were, I think, from Mr. Lyons.

Q. What did the change of the bolting-chest cost, work & material?

A. Some $50 or 75, I should judge, would cover that. I never kept my work separate. I only charged Mr. Young for my time. I did not specify to Mr. Young what work I did.

Q. These hoops, elevators, conveyors and screens—did you put in new ones or repair the old?

360 A. Put in new hoops; Mr. Young paid me $40 apiece. The other I put in by contract.

Q. How much?

A. I made a contract with Mr. Young to put in a bur, he furnishing the bur and all the iron. I did the wood-work, and started the bur for $100.

Q. What did you do to the elevators, conveyors, and screens?

A. Put them all in new.

Q. How many elevators did you put in?

A. One new elevator, new spout, belting, caps, pulleys, and everything.

Q. New conveyors?

A. Yes, sir; put in one new conveyor and one screen.

Q. Then you put in one new elevator, one new conveyor, and one new screen?

A. I put in another belt for elevating meal.

Q. What was the cost of the elevator?

361 A. I think the elevator, belt & caps cost 80 or 90 dollars in New York and the freight on them here. I do not know what Mr. Duvall's bill was. He furnished the iron-pulleys and shafting for the elevators.

Q. And all these elevators, screens, conveyors, and all the other work you mentioned, together with the material made the bill $1,500?

A. Something upwards of $1,500. I forget the exact amount; that is up to last year; about a year ago.

Q. And that bill you gave to Mr. Young?

A. Yes, sir.

A. And he told you he wanted to use it in this cause?

A. Yes, sir.

Q. Have you seen it since you gave it to him?

A. No, sir; I have not.

Q. Have you done all his millwrighting ever since he purchased the property, to the best of your knowledge?

A. To the best of my recollection I have, sir.

Q. You never heard of his employing anybody else?
362 A. No, sir.
Q. What makes you think you put in three pairs of burs?
A. I said I was not confident. I am confident about two pairs, and maybe the third one.
Q. You cannot swear to it?
A. No, sir; I would not like to swear to it.
Q. Mills involve a great deal of millwrighting in the nature of things, do they not?
A. Yes, sir; mills are very expensive things to keep in repair.
Q. This bill of $1,500 for two years was not much more than the ordinary bill for wear & tear of mill property, was it?
A. No, sir; I have done more than that much work for Mr. Ray in the last two months.
Q. New hoops and elevators, & screens, & water-wheels, and all that sort of thing are inseparably connected with the use of mill property?
A. Yes, sir; cannot be a mill without that.
363 Q. How often would you repair the water-wheel of a mill?
A. Just when it gets out of repair.
Q. Well, what is about the average time; are there not repairs done yearly to the water-wheel?
A. No, sir; some water-wheels run eight or ten years without repair.
Q. Mr. Young, I presume, paid you for your work from time to time?
A. Yes, sir.
Q. Did he pay you by money or by check?
A. Mostly always paid me cash; I have no recollection of him ever paying me by check.
Q. Did you always pass him a receipt?
A. Yes, sir.

Re-examined by Mr. JONES:

Q. How long does the forebay last without being repaired generally?
A. It will last some eight or ten years.
364 Q. How long will one elevator last in ordinary usage without a new elevator?
A. Such a one as I put in for Mr. Young ought to last 15 or 20 years.
Q. Well, when, on that water-wheel and that elevator, and conveyor and that forebay there has been no occasion for repairs since, to your knowledge, has there?
A. Some little repairs to the water-wheel.
Q. About what time were all these improvements made by you—this mass of improvements—these elevators and water-wheel, conveyor, &c.; a year or eighteen months ago?
A. Yes, sir.
Q. They were all made at the same time or about the same time?
A. Yes, sir; about the same time.
Q. Then if the forebay was made a year or eighteen months ago——
A. I do not include the forebay. I include the water-wheel, conveyor, screen.
365 Q. But you stated that you built the forebay from the canal into the water-wheel?
A. Yes, sir.
Q. Entirely new?
A. Yes, sir.

Q. How much work had you done for Mr. Young before you did that work?

A. Very little work. I had not done much work for Mr. Young before that.

Q. Do you know how long that was?

A. No, sir; I am not positive.

Q. Cannot you come near it?

A. No, sir; I am not positive whether it was before or since he purchased the mill property.

Q. Did you get some plate or something from Mr. Sims besides the lumber you got from Mr. Wheatley?

A. Nothing to my recollection; I got some lumber from Pickerell.

366 Recross-examined by Mr. DAVIDGE:

Q. Did the Pickerell lumber enter into the $1,500 bill?

A. Yes, sir.

Q. Then the bulk of the work and material that enter into the $1,500 bill, I understand you to say, was all done, or nearly all done, within the past year or eighteen months?

A. Yes, sir.

Q. How long had you furnished that work and material before you supplied the $1,500 bill to Mr. Young at his request?

A. I suppose it has been some six or eight months, I reckon.

A. C. PRATHER.

Sworn & subscribed to before me this 10th of March, 1875.

J. J. JOHNSON,
Exam'r.

367 CHARLES WILSON, of the city of Georgetown, aged seventy-six years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Mr. Wilson, please state your age, residence, and occupation.

A. I am seventy-six years old, and have been a miller in Georgetown. My residence yesterday was 74 1st st., Georgetown.

Q. You are familiar with the property in Georgetown?

A. Well, in 1870 I was assessor, as you know, and I assessed that property under the corporation of Georgetown. That is, I was one of 322 others.

Q. Now, in the summer of 1871, what, in your judgment, was the value of the *the* Mark Young property—I mean that lying between
368 Fayette street and Tenney's mill and the canal and Water street, including water rights and everything else upon the property, to the best of your judgment and opinion?

A. My judgment at the time, knowing the greater part of the mill property being upon Water street, and hearing of the sale of the property, I remarked that it was a very high sale; a very high price for it.

Q. What did you hear was the price?

A. I heard the price was $14,000.

Q. Do you wish to make any explanation of your former answer? Do you wish to add anything to your former answer?

A. I can only say that as assessor in 1870 I knew the exact—how much there was on the street—but assessing in the corporation we just assessed the value of it as it was on the ground, the improvements that

were on the ground; and my impression—I understood when it
369 was over it was taking the reason Mr. Young had in having that cut off; it left simply the ground to be assessed without any improvements beyond the warehouse on the other side.

Cross-examined by Mr. DAVIDGE:

Q. Then you thought, Mr. Wilson, in view of your previous assessment of the property and in view further of the fact that a portion of the mill lay upon Fayette street considerably, that the sale was a very good one?

A. Yes; I thought the sale was an extravagant price.

Q. How much water power did you suppose belonged to the mill?

A. I had the knowledge at that time that there was 150 inches which did not belong to the mill, because it was a part of the machinery of the mill, and they paid the rent for it.

Q. Then you thought that $14,000 was a high price for the
370 property without estimating the value of the water power?

A. No, sir; I estimated the value of the water power just as I would the machinery. It was a high price for it as it was.

Q. At what did you estimate that water power?

A. I estimated the water power as part of the machinery for which they paid an annual rent for.

Q. Then you did not regard the water power as worth anything over and above the rent payable on it, did you?

A. I considered that as a part of the machinery and for which they paid a rent for.

Q. But you did not consider the water power worth a premium?

A. No, sir; I did not consider it worth an equivalent to the rent and the use of it.

Q. What is the rent payable for water under the canal leases? Is it not about $2\frac{1}{2}$?

A. It is $3 an inch. About 1871 it commenced at $2; then it
371 was $2\frac{1}{2}$ and then it went up to three.

Q. Can you lease any water now from the canal company?

A. I do not suppose you can.

Q. Is not the water right alone of this property worth a large premium?

A. I think not, sir; not the water right of the canal company.

Q. Worth nothing more than the rent, in your judgment?

A. No, sir; not from the canal company.

Q. What do you mean by the canal company?

A. I mean the canal company have shut themselves out from renting any water until it—what they had given to Henry Dodge has been supplied.

Q. Does not Dodge hold the water 16 or 18 dollars an inch?

A. I do not know what he holds it at.

Q. Would not this property of Young's be worth a great deal more money if connected with the river front, so as to enable the owner to carry on the business of shipping coal?

372 (Objected to by counsel for the defendant.)

A. If Young owned the water front it would be worth that much additional to his property if he would let it or use it as a coal wharf, in connection with or as a whole.

Q. Suppose you were called upon to assess this piece of property between Water street and the canal, which we call the Young property, at what would you assess that property?

A. I would assess it at $50 a front foot.

Q. At what would you assess the improvements?

A. I would assess the improvements—assessing them for Georgetown as I did in 1870—I would assess them for 5 or 6 thousand dollars, the greater part of them being on the street, but to assess it on the property I would not assess the improvements beyond the ware-
373 house. The rest of it—I would not assess the improvements at anything.

Q. Then you should assess the whole property at what?

A. The whole property between Water and the canal, I would not assess it at more than 6 or 7 thousand dollars.

Q. Would that include the part of the mill lying on Fayette street?

A. No, sir.

Q. Then I understand that throwing out the portion of the property built upon the street, you would assess the residue for 6 or 7 thousand dollars?

A. Yes, sir; the land and all.

Q. Now I understand that much. This assessment would not include any premium for the water right, would it?

A. No, sir.

Q. You would not regard the water right as worth any more than the rent?

A, No; because the water right is on the street, and in fact is used on the street.

374 Q. Now suppose Young, in addition to the property which he now professes to own between Water street and the canal, owned also property running from the south line of Water street to the river, or in other words the wharf property belonging to the Bradley estate, how much more valuable would the ownership of that wharf property make the property on the canal?

A. I think they are separate properties, and I do not think would add or detract from either.

Q. Then you do not think that the wharf property is rendered less valuable by separating it from the canal, do you?

A. Yes; I think the wharf property is lessened by the separation from the canal.

Q. Is not the canal property also lessened in value by separation from the river?

A. It is lessened, or would be lessened by the taking away of the tail race of the mill.

375 Q. Well, suppose the tail race of the mill was not taken away, would not the canal property be very valuable if it was not separated from the wharf property and the business of shipment of coal could be carried on?

A. The shipment of coal could not be carried on without the use of the canal property.

Q. I asked you whether the value of canal property would not be increased if it was not separated from the wharf property, and in consequence the business of shipping coal could be carried on?

A. As a whole, the wharf property would be greatly benefitted as a coal property.

Q. Well, if the wharf property would be be benefitted by connection with the canal, would not the canal property be benefitted by connection with the river?

A. No, sir; I should think not.

376 Q. Do you think it would be impaired in value—do you think

the canal property would be impaired in value by connection with the river?

A. By connection with the river as a mill property it would be an addition to the value of the mill as a mill property.

Q. I am not speaking of it as a mill property only. I am speaking of property as valuable for any purpose, and I ask you whether the value of that canal property would not be increased by being connected with the river front?

A. I do not think it would, sir.

Q. Do you not think that property would be more valuable if it could be used for both milling and the shipment of coal than if it could be used for milling only?

A. Yes; I think it would.

Q. Then you think that the canal property would be increased in value if in addition to its being used for milling purposes it could be used for the purpose of shipping coal?

377 A. No, sir; it would be detracted, I think, as a mill property.

Q. But I am not speaking of it, as I have already said, as a mill property alone. My question is, whether this canal property, if capable of use both for milling and the shipment of coal, would not be more valuable than if capable of use for milling alone?

A. I think, as I stated before, it would add to the value of the wharf property and detract from the mill property.

A. Yes, sir.

Q. Then, as I understand, the canal property would be of less value if capable of being used for the purpose of shipping coal?

A. If it was for shipping coal.

Q. Then I understand that the canal property, being cut off from the river, is a positive advantage to it, in your judgment?

378 A. I do not think it is a positive advantage. It is an advantage for carrying grain and carrying it up to it, and necessarily adds to it as a whole, and only as a whole.

By Mr. JONES:

Q. Can the property both north & south of Water street be used for coal purposes without crossing Water street?

A. It would have to cross Water street.

C. W. WILSON.

Sworn and subscribed to before me this 27th of February, 1875.

J. J. JOHNSON, *Ex'm'r.*

379 R. W. WELCH, of the city of Georgetown, aged thirty years, a witness produced, sworn, and examined on the part and behalf of the defendant, deposeth and saith as follows:

By Mr. JONES:

Q. What is your age, residence, and occupation?

A. My age is 30; residence, Georgetown; and occupation, miller.

Q. How long have you been engaged in the milling business, and where?

A. The Columbia Mills, in Georgetown, which are situated at the corner of Fayette and Water, for eleven years.

Q. Are you familiar with the value of wharf and mill property there?

A. Well, I am familiar with the value of mill property, I believe; all of it.

Q. Do you know the Young property?

A. Yes, sir; very well.

Q. State, to the best of your judgment, the value of the Young property in the summer of 1871?

380 A. I should govern my judgment as to the value of the Young property from what the property east of our mill sold at. I think it was 1865. That amount, I think, was in the neighborhood of $7,000, and that property has canal privileges so far as water is concerned, and it has river privileges so far as wharfage is concerned, also, and quite a good house, equally as adaptable for the milling business as Mr. Young's, & I think a little more so.

Q. It is the Spencer property, is it?

A. It is known—I do not know the name of the property. It is leased by Agnew.

Q. Spencer is the superintendent of it?

A. It is between our mill and Frederick street; immediately east of our mill.

Q. Governing your judgment, but including water sufficient to drive the Young mill, give us your estimate of the value of the Young property in 1871.

381 A. I have understood Mr. Young had an insufficient amount of water, & since that time he has had to purchase water, I think, to the amount of $6,000.

(The answer of the witness objected to by counsel of complainant on account of hearsay.)

The WITNESS. Shall I continue the value in my judgment?

Mr. JONES. Yes, sir.

The WITNESS. The only difference that I can see between the two is the machinery in the mill of Mr. Young.

Q. Taking it altogether, what is it?

A. I think there would be less interruptions for coal purposes in that property than I have just spoken of because of no interferences. That is about all I have to say about that.

Q. With all this explanation, give us the amount in dollars, to the best of your judgment, of the value of the Young property in the summer of 1871.

382 A. Well, I think from 10 to 12 thousand dollars is a fair price; that is my opinion.

Cross examination waived by counsel for complainants.

R. W. WELCH.

Sworn and subscribed to before me this 8th of March, 1875.

J. J. JOHNSON, *Ex'r.*

383 JOSIAH W. DEENER, of the city of Georgetown, aged fifty-one years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. State your age, residence, & occupation.

A. My age is 51; residence No. 149 West street, Georgetown; I am engaged in the milling business.

Q. How long have you lived in Georgetown?

A. Let me see—eleven years, I think, sir.

Q. Are you familiar with the value of property in Georgetown—I mean wharf property?

A. I have been a great deal about the wharves there; I know something about it.

Q. Do you know the property called the Mark Young property?

A. Yes, sir.

384 Q. Just state the value of that property in the summer of 1871, to the best of your judgment.

A. Do you include everything? I understand part of the building which Mr. Young purchased is on the street.

Q. I mean the property that he bought from the west side of Fayette street to Tenney's mill, with all the improvements, &c.

A. The water privilege is the only thing that would be valuable, and that has to be paid for to the Canal Company.

Q. What do you think it would be worth in 1871?

A. I should place it at $14,000. That is as much as I would have given for it in 1871.

Q. Do you include in this estimate everything?

A. I include everything.

Q. What do you suppose is the value now?

A. I do not think it is worth any more.

385 Cross-examined by Mr. DAVIDGE:

Q. Do you mean to say that you value the Young property, between Water street and the canal, as worth, in the summer of 1871, $14,000?

A. Yes, sir.

Q. What allowance do you make for a portion of the property being on the street?

A. The portion that is on the street includes that part in which the water-wheel and machinery is, and is the most valuable part of the building.

Q. Buying the property, however, with a portion of the mill and machinery on the street, I understand you to value it at $14,000?

A. As it was at that time.

Q. Just as it stood?

A. Yes, sir.

Q. Do you know what water-power was attached to the mill in the summer of 1871?

386 A. I do not, sir.

Q. How then can you fix, with any degree of accuracy, the value of the mill property?

A. I knew there was a water privilege, and supposed, as a matter of course, there was enough to run the machinery.

Q. The extent of the water-power, however, you do not know?

A. I do not know the full extent of it, sir.

Q. Nor the rent payable for that water-power?

A. I suppose it is the rent we are all paying; about the same thing; we pay $5 an inch.

Q. The property would be worth more, however, if the water-power was to be paid for at the rate of $2½ or $3 an inch, would it not?

A. It would make some difference, of course.

Q. You are a miller, I think?

A. I am in the mill business. I am not a practical miller.

Q. In fixing the values upon this property, you treat it as a mill property?

A. I treat it as a mill property.

387 Q. Have you taken into account the adaptability of the property to other purposes than those of milling?

A. I cannot say that I have, sir.

Q. I suppose not. I suppose that the property, being cut off from the river, is, in consequence of that fact, not well adapted to any other purpose than that of milling, is it?

A. No, sir.

Q. If connected with the river, it would, however, be adapted to coal purposes, would it not?

A. Yes, sir.

Q. And that adaptability would very largely increase its value, would it not, assuming it had access to the river?

A. It would if the coal operations were to be continued in full force, as they once were. I do not think, however, Mr. Davidge, that property can be sold now for coal purposes with future expectations.

Q. That is a mere matter of speculation upon your part?

388 A. Precisely, in my judgment. If I was going to purchase property, I would not buy with a view to coal operations at present.

Q. But if you had purchased in the summer of 1871, was there anything at that time to prevent your purchasing with a view to coal operations?

A. I would have preferred, certainly, to have had the property to the river.

Q. And had the property been connected with the river and not separated from it, that would have added a new and material element of value, would it not?

A. Certainly it would have made it more valuable, sir. Of course there would be more ground, in the first place, and more privileges.

Q. More ground and more privileges; and would it not have opened an entirely new field of enterprise in respect to the use of that property?

(Objected to by counsel for the defendant.)

389 A. I do not know that it would. It would depend upon the purpose he wanted it for.

Q. Do you know what rent a portion of the property was bringing in connection with the property on the river below in the summer of 1871, for coal?

A. I know nothing of that, sir.

Q. If you had not been told in the summer of 1871 that this property in connection with the property below on the river was bringing a rental of 12 or 14 hundred dollars a year for coal purposes, would not that have entered very largely in your estimate of the value of the property; would you not then have rated the property as available, not only for milling purposes, but also for the purpose of shipping coal?

A. I would not have desired coal operations if I was going to carry on the mill business. It is detrimental to the flour trade most assuredly.

Q. But suppose you had had no objections to carrying on mill

390 operations; and it appears here that Mr. Young had none, for he carried on the mill operations for two years with the coal operations going on alongside of him?

A. I would have objections, but I cannot say what I would have done, because my mind is so thoroughly fixed upon the fact that coal operations and flour operations in connection with each other are detrimental to the flour interests, so much so that it became necessary on one occasion for Welch & Herr to sue out an injunction to restrain the consolidated company from landing coal so near the mill.

Q. But did not Mr. Herr & Welch agree that the coal operations might go on, notwithstanding the injunction?

A. They agreed to compromise with very strong restrictions by which

it was stipulated at particular periods the company was to desist or keep it well saturated with water, &c., keeping the dust from mixing with the flour, &c.

391 Q. And under that arrangement the coal business continued, did it not?

A. Yes, sir; the coal business continued up to recent periods. It is not going on now.

Q. The coal operations ceased this spring, did they not?

A. I do not know when they ceased, sir; the last year or two I have been in the city with the sale of flour.

Q. What sort of a mill does Mr. Young carry on; a flour mill, or a corn mill?

A. A corn mill.

Q. Do you think that the coal operations are as detrimental to that business as to the manufacture of fine flour, such as was and is still manufactured at the mill of Herr and Welch?

A. It would not make so much difference, still I would not like to mix the two together.

Q. Did you ever hear of Young getting out an injunction because his corn operations were interfered with?

A. No, sir.

Q. By the proximity of the coal operations?

392 A. I never heard of his getting out an injunction, sir.

Q. Did you ever hear of any complaint on his part?

A. I do not remember. I may have heard.

Q. Well, in consequence of your notion, well or ill founded, that coal operations interfere with milling operations, you have, in fixing the value of this Young property, confined yourself, as I understand, exclusively to its value as milling property irrespective altogether of any value that might attach to it in consequence of its adaptation to coal operations?

(Objected to by the counsel for the defendant on the ground that it is a speech to the witness and not a question.)

A. I have valued it as a milling property.

Q. Exclusively?

A. I would not say exclusively. I might want to use it for some other purpose if the mill was burned down.

Q. But in fixing this valuation of $14,000, you have assumed

393 that the property was to be used, except in the event of the destruction of the mill by fire, exclusively for milling purposes, have you not?

A. That is what I based my estimation upon.

Re-examined by Mr. JONES:

Q. Mr. Davidge has asked you about this property being severed on the south of Water street. Do you know of any severance of that south of Water street property except by a public highway?

A. That is all I know of.

Q. The injunction you referred to, was that against the company using this identical property?

A. They were using the coal run next to the mill between Mr. Welch's and Mr. Young's. That is the company I referred to.

Re-cross-examined by Mr. DAVIDGE:

Q. What description of flour has been manufactured for the past 10 years at the mill of Herr & Welch—superfine flour, is it not?

394 A. It is the best of family, extra & superfine. The best family is their specialty—James S. Welch's.

Q. What do you mean by James S. Welch's?

A. James S. Welch's best flour. That is the brand by which we designate the quality of flour.

JOSIAH W. DEENER.

Sworn & subscribed to before me this 10th of March, 1875.

J. J. JOHNSON,
Exam'r.

395 JOSEPH W. DAVIS, of the city of Georgetown, aged fifty-nine years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. Mr. Davis, please state your age, residence, and occupation for the last six or eight years.

A. I am fifty-nine, sir; residence, Georgetown, & for the last six years I have been clerking for Herr & Welch. Previous to that I was 2 years & 3 months in John Davison's mill.

Q. The Davidson's mill is what now?

A. The Tenney mill.

Q. The Tenney mill now; so that for the last six or eight years you have been just on one side and then on the other side of this Young property?

A. In April, 1867, I went to John Davidson's and clerked for him for two years and three months. On the 1st of July I went to Herr & Welch and clerked for them until the first of July past.

396 Q. Where are those mills located? That is what I want to find out.

A. Those mills——

Q. I mean as to the Young property—one is on one side and the other on the other?

A. Yes, sir.

Q. Are you familiar with the value of mill property and wharf property in Georgetown?

A. Well, sir, I have heard a great deal talked about the value of different mill properties.

Q. You are a brother of James S. Davis, who has testified in this case?

A. Yes, sir.

Q. Lived with him?

A. Yes, sir; for a great many years, sir.

Q. Now, Mr. Davis, I want you to carry your mind back to the summer of 1871 and state what, in your judgment, is the value of the Young property, by which I mean the property lying between Welch's mill and Tenney's mill, & the Canal & Water street, including everything

397 there, water improvements and everything else.

A. Well, if I had been asked the question what you would give for, in cash, for the Young's mill and that old warehouse between Young's mill and now Tenney's mill, I would not have given over 10 or 12 thousand dollars for it, taking it just as it stood in 1871.

Q. Do you include in that water?

A. I include the water privileges & all.

Q. And the improvements?

A. Yes, sir; exactly.

Cross-examined by Mr. DAVIDGE:

Q. What water-power was attached?

A. I do not know what water-power was attached to Young's mill.

Q. Are you putting a value upon it as mill property only, or are you taking into consideration the adaptability of the property to other purposes as well as milling?

398 A. I would have just taken the thing as it was. It was then run by Mr. Young as a mill. I would have just taken it as it was, in its dilapidated condition, the whole property, the mill and the warehouse. I believe that was included in it, and if you asked me the question what I would have given for it, I would say I would not give over ten or twelve thousand dollars—twelve on the outside.

Q. Don't you know that in the summer of 1871 this property, together with property lying below it on the river, was under a rental of 12 or 14 thousand dollars for the shipment of coal?

A. I knew it was under a rent, but I did not know at what amount.

Q. In putting a value upon the property do you include its adaptation to other purposes than milling, or are you simply valuing it as a mill property and as a warehouse?

399 A. I just simply valued it as mill property; I took no other matters into consideration. In putting this valuation I speak of, I put that upon it as for mill purposes. I do not attach any other valuation whatever that it might be used for.

JOSEPH W. DAVIS.

Sworn & subscribed to before me this 4th of March, 1875.

J. J. JOHNSON, *Exam'r.*

400 JAMES H. WELCH, of the city of Georgetown, aged thirty-three years, a witness produced, sworn, and examined on the part and behalf of the defendants, deposeth and saith as follows:

By Mr. JONES:

Q. State your age, residence, & occupation.

A. I am thirty-three years old; reside in Georgetown; occupation, a miller.

Q. How long have you been in this occupation, and where in Georgetown?

A. The Columbia Mill, known as James S. Welch's mill.

Q. For how many years?

A. For eleven years.

Q. Do you know the Young property, so called, in Georgetown?

A. Yes, sir.

Q. Where is it in relation to this place that you have been occupying?

A. It is situated on the west side of Fayette street.

Q. Just west of the place where you have been?

401 A. Yes, sir; just west; Fayette street separates it.

Q. Have you been engaged there for eleven years?

A. Yes, sir.

Q. Are you familiar with the valuation of mill and wharf property in that neighborhood?

A. Yes, sir; I think so,

Q. Well, now, carry your mind back to the summer of 1871, and state what in your judgment was the value of the Young property, meaning the property along between the canal and Water street, & Fayette street & Tenney's mill, including water right?

A. Including the water privileges?

Q. Yes, sir, the water privileges he has now and the water privileges as they were then?

A. Well, sir; I would suppose it to be worth about 10 or 12 thousand dollars.

402 Cross-examined by Mr. DAVIDGE:

Q. Do you know the water-power attached to the mill in the summer of 1871?

A. I am not positive as to the amount of water. I think, though, it was 120 inches.

Q. In valuing this property, do you fix its value exclusively with reference to milling purposes?

A. The portion that he has purchased I do.

Q. Then I understand that for milling purposes exclusively, without any reference to the adaptation of the property for the shipment of coal or any other business, you estimated as having been worth in the summer of 1871 from 10 to 12 thousand dollars?

A. Yes, sir; but I do not think it has destroyed the value of that portion of the property lying nearest the river.

Q. I am not asking you as to the effect upon the property lying nearest the river. My question has reference simply to the element of
403 value upon which you base your estimate, and I understand that you, in making your estimate of the value of the property, have reference exclusively to its value for milling purposes?

A. Yes, sir.

Q. Now, if this property could be used for other purposes besides those of milling, as for instance for the shipment of coal would not its value be largely increased?

A. I should think it would be increased, say 5 or 6 thousand dollars. I mean to say, taking the river property.

Mr. JONES. Taking both together?

The WITNESS. Yes, sir.

(By Mr. DAVIDGE.) I want you to tell me how much the value of this property would be increased by the fact that it had a connection
404 with the river. I am not asking you to combine the value of this property with that of the river front, but I want to know how much the value of this property would be increased if it had a connection with a river, by means of which the business of transporting coal could be carried on as well as the business of milling?

A. Well, sir, I should say $5,000, as I said before.

Q. Then, if this property had not been cut off from access to the river and could be used for the shipment of coal as well as for milling purposes, it would, in your judgment, have been worth in the summer of 1871 from 15 to 17 thousand dollars?

(Objected to by counsel for defendant on the ground that the witness had not stated that.)

A. It would undoubtedly make the property Mr. Young has
405 bought more valuable to have them joined, connected and operated jointly.

Q. Have you not told me that the difference between the property cut off from access to the river and connected with the river would in your judgment be $5,000?

A. No, sir; I think it would be enhanced; no question about that.

Q. Have you not said it would be enenhanced to the extent of $5,000?

A. I think I stated to connect the two properties, that is the piece lying on the river and the canal property.

Q. Did I not ask you what would be the increased value of this property if it had access to the river, not connecting, however, the two pieces of property?

A. Yes, sir; that was your question.

Q. And did you not answer me $5,000?

A. I said with the property connected, Mr. Davidge. If I do not mistake I do not see that the other property is destroyed altogether by the separation, sir. I think it is equally as valuable to parties
406 lying on either side as it is to the Young property that he has bought, for coal purposes.

Q. Well, let us see. Can coal operations be carried on where your mill is?

A. Well, we have an idea of doing so, sir.

Q. What is the front of your mill?

A. 127 feet, sir.

Q. Where would you carry on coal operations—east or west of your mill?

A. Well, we could carry them on east or west and have a run on the upper side of the mill.

Q. In Fayette street?

A. Yes, sir; use a portion of the street and a portion of our property there. I think we run 27 feet above the mill. It belongs to the mill.

Q. Have you property intervening between the west line of your mill & Fayette street?

A. Yes, sir; 27 feet.

Q. A triangle, however, running to a point and ending in Fayette street?

A. Yes, sir.

407 Q. The lower part of the west line of your mill runs into Fayette street a number of feet, does it not?

A. The lower part of our mill runs into Fayette street about two feet, I think, sir.

Q. Then on that side you are cut off by Fayette street from coal operations?

A. Not by getting a privilege from the corporation. I should not think we would be. Mr. Young has the privilege to occupy one-half of it. I should think we could occupy the other to run a water wheel on it.

Q. Do you not think you could carry on coal operations in connection with milling?

A. No, sir; I do not think we could without proper screens and going into considerable expense to do it.

Q. But with those appliances you might do it?

A. Yes, sir; we might be able to do it.

408 Q. Then in carrying on coal operations would your idea be to abandon the business of milling?

A. No, sir.

Q. But to carry on each conjointly?

A. Yes, sir.

Q. Using proper precautions?

A. Yes, sir.

Q. Well, on the east side of your mill have you any property?

A. We have an area—yes, sir; we own the whole of the alley. There would be sufficient for a run if I do not mistake.

Q. Your idea is, that alley—that whole space is 27 feet?

A. 25 or 27. I am not positive as to the depth of it.

Q. Have you contemplated running coal from that by means of that alley?

A. We had talked about it, sir.

409 Q. What has induced you to contemplate the addition of the coal business to that of milling? Is it a very profitable business?

A. Well, we thought at the time it was profitable and would pay us in connection with milling.

Q. Very large rents are paid for property connecting with the river and canal?

A. Well, I do not know, sir; we would not consider them very large rents. The Consolidation Company paid I, think, $1,200 for the privilege there for running coal.

Q. What rates are paid per ton for transporting coal from the canal bank to the river?

A. Well, I have heard various estimates made of it; from five to ten cents.

Q. Per ton?

A. Yes, sir.

Q. Pretty good profits.

A. There is a great deal of labor attending it, Mr. Davidge, and considerable expense.

410 Q. Well, east of the alley, who owns the property?

A. The property east of the alley was bought by a company in Philadelphia, I think, sir.

Q. A coal company?

A. Really I could not say; it was bought by a company of gentlemen.

Q. Is it used for coal purposes?

A. Yes, sir,

Q. What is about the frontage of that property?

A. 126 feet if I do not mistake. I am not positive as to the number of feet.

Q. About the same frontage as your own?

A. About the same frontage, sir.

Q. Well, now, west of the Young property there is the Tenney property?

A. Yes, sir.

Q. And what is west of that?

A. The Borden Mining Company.

Q. Used for coal purposes, is it not?

A. Coal purposes; yes, sir.

411 Q. Now I have been pursuing this line of examination to find out what you mean when you say that the Bradley wharf property has not, in your judgment, been materially injured by separating from it what they call the Young property.

A. Yes, sir.

Q. Inasmuch as that property could be used for coal purposes in connection with other property, will you be so good as to tell me in what way the Bradley wharf property could be so used?

A. Yes, sir. It could be used for shipping over the Consolidation Canal front and stored or stocked, as they term it, on the consolidation and put right into the vessels with of course an additional length of run or gangway, or whatever you term it—trestle-work.

Q. Anything else?

A. And the same as to our property.

412 Q. These, however, are the only uses that could be made of the Bradley wharf in connection with the shipment of coal?

A. Yes, sir.

Q. The use of the property then would depend, in your judgment, so far as the shipment of coal is concerned, solely upon whether you or these coal companies were willing to rent it, would it not?

A. Most assuredly, sir.

Q. Then is not the value of the Bradley coal wharf substancially destroyed for coal purposes when such value is made dependent upon the interest of you or these coal companies; is it not the next thing to the destruction of any market value for coal purposes of the Bradley wharf property? Now tell me that.

A. It is certainly dependent upon the adjacent property, unless the privilege should be granted by Mr. Young.

Q. Answer it a little further.

413 (The question was repeated to the witness).

A. Well, the lower portion of it could be used for coal purposes, which would bring a revenue to the Bradley property or Bradley estate or owners.

(The question was again repeated to the witness.)

A. It is so far as the canal front is concerned, but not so on the river front.

(The question was again repeated to the witness.)

A. I think I have answered it about as fully as I know how.

Q. How would you use the lower part of the wharf property for coal purposes?

A. The coal runs could be brought over the Consolidation wharf, that is the canal wharf, and could be carried along down to the river to the Bradley property, and there could be used for stocking purposes or put right aboard vessels.

414 Q. Does the property of the Consolidation Coal Company on the river join that of the Bradley property?

A. Yes, sir; it joins it. If I understand correctly, I think Mr. Tenney, who owned that property on the river front, sold it to the Consolidation Company, which includes the Consolidation Company, the Tenney property, and the Borden Mining Company property. These are all included if I remember. I desire to correct the statement I made just now. I wish to say that the property was sold on the river front by Mr. Davidson to the Borden Mining Company instead of being sold to the Consolidation Company, which combines all the property on the river front.

Q. Then the Bradley wharf property would be, according to your statement, dependent in respect of its use for coal purposes upon

415 these two coal companies that own the wharf property to the east and west, would it not?

A. So far as the canal front is concerned it would be.

Q. What coal business is these irrespective of the canal front?

A. None, sir.

Q. None. Then do you not think that the market value of the Bradley wharf property as property available for the shipment of coal would be practically destroyed if made dependent upon the coal companies that flank it to the east and west?

A. I say it is dependent upon the companies east and west of it for coal purposes.

Q. Would not that fact then practically destroy its market value as property available for the shipment of coal?

A. I cannot say, Mr. Davidge, that the property is entirely de-
416 stroyed for shipping purposes. I think it would bring a liberal rent from either one of the companies adjacent. That is my impression, sir.

Q. I ask you about its market value, and I wish to know whether property can be said to have a market value which is dependent for its value upon two persons or two corporations?

A. Yes, sir; now I understand you. It would destroy its market value; yes, sir.

Q. Irrespective of the shipment of coal, wharf property in that locality is, I believe, of very little value, is it not?

A. We consider our property valuable for the manufacture of flour.

Q. But is not your property valuable because you are largely engaged in the shipment of flour?

A. Yes, sir.

Q. Is Mr. Young largely engaged in the shipment of flour?

417 A. No, sir.

Q. Cornmeal is not an article of shipment, is it?

A. To a certain extent it is.

Q. To a small extent, is it not?

A. To a small extent.

Q. Did you ever hear of Mr. Young shipping cornmeal?

A. He has shipped cornmeal to Baltimore; not in large quantities though.

Q. Is there any other business carried on in this locality to make wharf property valuable unless it be for the shipment of flour or the shipment of coal?

A. No, sir; those are the only two purposes, I think, that could be used to advantage for the manufacture of flour and the shipment of coal.

Q. You mean, I suppose, by the manufacture of flour, the shipment of flour which has been manufactured and is to be sent off to a market?

418 A. Yes, sir.

Re-examined by Mr. JONES:

Q. You would *pre*haps become confused by Mr. Davidge's questions. I want you to explain what you me'nt in your testimony when you said that the Young property would be worth $5,000 more if it was connected with the wharf property and the river; what did you mean?

A. By connecting the two properties?

Q. Yes, sir.

A. Well, I mean to say that the river front is valuable to the amount of $5,000.

Q. Then you mean that if the two parcels together were taken it would be altogether worth 17 or 18 thousand dollars?

(Objected to as leading.)

A. I mean that to take the two properties together my idea of the value is that it is worth about 17 or 18 thousand dollars. That is what I mean to say.

419 Q. You have testified in answer to Mr. Davidge's question that you valued the Young property for milling business. What business is Mr. Young in?

A. He is engaged in the manufacture of cornmeal.

Q. What business has he pursued on this property ever since he purchased it?

A. The manufacture of meal.

Q. Has he pursued any other business?

A. Not that I know of on that property. He may have engaged in other speculations.

Q. You have testified, in answer to Mr. Davidge's question, that the value of this Bradley wharf property was dependent upon coal companies for the use of coal or transshipment of coal. Is not all wharf property used for coal dependent upon coal companies hiring or buying it?

420 A. If it is wharf property, certainly should think so.

Q. What do you use your wharf for?

A. Well, we use it for stabling purposes, shipping flour over it, and warehouses, storage of flour, and the like.

Q. Could the wharf property south of the Young property be used for the same purpose?

A. Most assuredly.

Q. I want to know, Mr. Welch, if the Bradley wharf property adjoins what was formerly the Davidson wharf property?

A. It does, sir.

Q. And what was formerly the Davidson wharf property adjoins the Borden Mining Company's wharf property?

A. Yes, sir; it was bought by that company—the Davidson property.

421 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John J. Johnson, examiner in chancery, do hereby certify that in pursuance of the annexed the foregoing deposition taken down and by me reduced to writing in the presence of and from the statement of the witness at the time and place designated in the caption thereof, and then and there by me read over to the witness, and by subscribed in my presence, who then and there attending. The witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

422 In the supreme court of the District of Columbia, holding an equity court the 22d day of April, A. D. 1875.

POWELL M. BRADLEY ET AL.
v.
MARK YOUNG ET AL. } Equity. No. —.

This cause is certified to the court in general term for hearing in the first instance.

By the court.

By consent.

REG. FENDALL,
For Compl'ts.
F. W. JONES,
For Def't Young.

423 In the supreme court of the District of Columbia sitting in general term.

POWELL M. BRADLEY ET AL., COMPLAINANTS,
vs.
MARK YOUNG ET AL., DEFENDANTS.

This cause now coming on to be heard was argued by counsel and duly considered, and thereupon the court being of the opinion that the sale and conveyance by A. Thomas Bradley, surviving trustee of William A. Bradley, deceased, to the defendant, Mark Young, of the premises in the bill mentioned was null and void by reason of the want of power and authority in the said A. Thomas Bradley to make the same, but desiring such facts as will enable it to determine what if any terms ought to be imposed as a condition of granting the relief prayed for, therefore it is ordered, this 14th day of June, 1875, that the said
424 cause be and the same is hereby referred to the auditor with directions to enquire and report as follows:

1. What permanent and lasting improvements have been made by said Mark Young upon said premises since said sale and conveyance, and the cost thereof, and how far the value of the property has been augmented thereby.

2. What repairs said Mark Young has made since said sale and conveyance and the cost thereof, and how far said repairs were such as said Young as tenant of the property was bound to make under the covenants to repair contained in the lease read at the hearing or at common law, independently of said covenant, or were such as said Young made for his own convenience and in the prosecution of his business.

3. Whether the additional water power acquired by said Mark
425 Young is appendant to the premises or any part or is conveyed in gross.

4. How far any augumentation of value by improvements is dependent upon such additional water power.

5. The effect of the removal of said additional water power upon the value of the property.

6. How much, if any, of the money paid by said Mark Young to A. Thomas Bradley went to the benefit and advantage of the complainants.

And that in making said inquiries the auditor may use evidence already in the cause or take such further evidence as may be offered by the parties.

By the court.

425½ *Auditor's report.*

426 In the supreme court of the District of Columbia sitting in general term.

BRADLEY ET ALS., COMPLAINANTS,
vs.
YOUNG ET ALS., DEFENDANTS.
} Equity doc. 12. 3153.

Auditor's report on the order of reference made and filed herein June 14, 1875.

To the supreme court of the District of Columbia, sitting in general term:

This cause was referred to me with instructions "to enquire and report as follows:

"1. What permanent and lasting improvements have been made by

said Mark Young upon said premises since said sale and conveyance, and the cost thereof, and how far the value of the property has been augmented thereby.

427 "2. What repairs said Mark Young has made since said sale and conveyance, and the cost thereof, and how far said repairs were such as said Young, as tenant of the property, was bound to make under the covenants to repairs contained in the lease read at the hearing, or at common law, independently of said covenant, or were such as said Young made for his own convenience and in the prosecution of his business.

"3. Whether the additional water power acquired by said Mark Young is appendant to the premises or any part, or is conveyed to him in gross.

"4. How far any augmentation of value by improvements is dependant upon such additional water power.

"5. The effect of the removal of said additional water power upon the value of the property.

"6. How much, if any, of the money paid by said Mark Young
428 to A. Thomas Bradley went to the benefit and advantage of the complainants."

Your said order further directs that in making said inquiries the auditor may use evidence already in the cause, or take such further evidence as may be offered by the parties.

The only evidence offered before the auditor, in addition to that on the hearing by the court, is that of defendant Mark Young, which, with the exhibits therein referred to, is hereto appended:

I am directed by your order—

First. To enquire as to the cost of supposed improvements made by defendant Young upon the property of complainants, since the same was conveyed to said defendant by A. Thomas Bradley, and how far the value of the property has been augmented thereby.

Second. What repairs, their nature and cost, have been made
429 by said Young upon said property during the same period. The evidence in relation to these expenditures are inconclusive as to whether they were made for improvements or repairs. Considering them as a whole, it is quite clear that those made since the conveyance to def't Young were so made by him under the impression that the title to said property had vested in himself; that, therefore, he was improving and repairing his own property; hence his expenditures were largely in excess of his liability as tenant, and were made by mistake, and in his own wrong, and for which he is without remedy as against these complainants.

I, however, submit herewith Sc'edule A, showing as nearly as I can from the evidence the gross amount of expenditures thus made by def't Young on this property, after the supposed conveyance thereof to him.

430 Third. I am directed to report "whether the additional water-power acquired by said Mark Young is appendant to the premises or any part, or is conveyed to him in gross." The increased or additional water-power referred to appears to be one-thirtieth part of fifteen hundred inches of water leased to Henry H. Dodge by the Chesapeake and Ohio Canal Company, which one-thirtieth part (or fifty inches) the said Henry H. Dodge by an assignment in writing, dated July 3, 1871, conveyed to Mark Young. This paper writing or conveyance does not indicate at what particular place this fifty inches of water should be taken from the canal, or the use to which it should be applied. Other

evidence shows it has been used by Mark Young in propelling the machinery of complainants' mill. The title to this additional
431 water I find to be in Mark Young and not appendant to the property of complainants.

Fourth. I am to inquire "how far any augmentation of value by improvement is dependant upon such additional water-power," and

Fifth. "The effect of the removal of such additional water-power upon the value of the property."

The 4th inquiry is substantially answered above. The additional water power not being appended to the property is not an improvement and does not augment its value; and 5th, if this additional water-power should be removed, it should leave the property as it was before the fifty inches of water was added, which, if then found to be a necessity, could be supplied by the rental or purchase of the quantity of water required. The effect, therefore, of the removal of said additional
432 water-power upon the value of the property would be the cost of resupplying it.

Sixth. I am required to report "how much if any of the money paid by said Mark Young to A. Thomas Bradley went to the benefit and advantage of the complainants." The evidence in the case does not show that any part of the money paid by said Mark Young to A. Thomas Bradley went to the benefit or advantage of the complainants.

THOMAS HOOD,
Auditor.

Oct. 20, 1876.

433 SCHEDULE A.

1871.				
Oct. 1.	Paid C. Thomas,	vouch'r 2	.....	426 08
" 31.	" Wm. Gibson,	" 1	.....	504 75
Sept. 30.	" Wm. H. White,			
1872.				
Apr. 1.	" " " "	" 4	.....	76 50
Feb'y	" Robinson & Bro.	" 5	.....	74 88
1873.				
Apr. 24.	" Mrs. H. P. Collinson	" 3	.....	513 15

Receipted bills filed for each above items.

Paid Rich'd A. Edmonston for brick work on mill. 365 00

Defendant Young also claims to have paid to Albert C. Prather, millwright, $1,500; to L. C. Cartwright, a carpenter, $1,500; to Offutt, a painter, $50; for labor in excavating tail race, $100; to W. T. Duvall for iron work, $100; for laying drain pipe, $40; and for new elevators, $258; to H. H. Dodge, for additional water-power, $5,000; and claims for his services in superintending work on mill, $2,000.

These several charges are without date.

THOMAS HOOD,
Auditor.

434 GEORGETOWN, D. C., *Oct. 30th*, 1871.

J. Young, esq'r., to Wm. Gibson, Dr.

For stone-work done at the mill:

78 pearch of stone, at 6.25 pr. pearch	487 50
Mason 1 day, cutting joists hels	4 50

My time & labor dig'ing and fixing posts inside of mill, 1 day each	6 50
Cement, 2½ barrels, at 2.50	6 25
	$504 75
Received in cash	200
	$304 75
To 10	8 00
	$296 74

Sep. 20.
Received payment.

WM. GIBSON.

435 GEORGETOWN, D. C., *Feb'y* , 1872.

Mark Young to Robinson & Brother, Dr.

1872.				
Feb'y 12.	To turning shaft for 20″ pulley, M., 3½, @ 60c.	2 10		
	" forging shaft for 20″ pulley, S., ½ hr., @ $1.00	50		
				2 60
14.	" finishing same, M., 1 hr., @ 60c	60		
	" 20 lbs. iron in same, @ 06c	1 56		
				2 16
15.	" forging two keys, S., 1 hr., @ $1.00	1 00		
	" 7 lbs. iron, @ 06c. in same	42		
	" fitting shaft in pulley, M., 6 hr., @ 50c	3 00		
	" " " at mill, M., 2 hr., @ 50c	1 00		
				5 42
20.	" am't of Gray & Noyes bill hereto attached	57 90		
	" hauling patterns to & castings from foundry	2 00		
				59 90
21.	" cutting off & boring out socket for toe of mill spindle, M., 8 hr., @ 60c	4 80		4 80
				$74 88

Received payment.

ROBINSON & BRO.

[Washington Iron-Works, Maine avenue, between 3d & 4½ streets, Washington City D. C. G. E. Noyes, E. N. Gray, manufacturers of steam-engines, boilers, saw and grist mills, shafting, pulleys, hangers, & architectural iron-work.]

436 WASHINGTON, D. C., *February 13th*, 1872.

Messrs. Robinson & Bro. to Gray & Noyes, Dr.

No. of order—	
To 2 pulleys, boring & turning & cutting to 9¼ inch. face, viz:	
1 32-inch pulley, 240 pds., 1 20-inch do., 130 pds.,=370, @ 6	22 20
Mach. & lathe, 51 hrs., @ 70c	35 70
	$57 90

437 GEORGETOWN, D. C., *April 1st*, 1872.

M. Young, Dr., to William H. White,

For painting	$20 00
Extra painting	12 00
	$32 00

Received payment.

WILLIAM H. WHITE.

GEORGETOWN, D. C., *Sept. 30th*, '71.

M. Young, to William H. White, Dr.

For painting on contract	$26 00
Extra painting	2 00
	$28 00
To painting office	5 00
For glazing 46 glass	12 00
	$45 50

Received payment in full.

WILLIAM H. WHITE.

438 GEORGETOWN, D. C., *Oct. 2d*, 1871.

Mr. M. Young to C. Thomas, Dr.

To furnishing materials and repairing his mill $426 08

Received payment.

C. THOMAS.

439 GEORGETOWN, D. C., *April 24th*, 1873.

Mr. Mark Young, bought of Mrs. H. P. Collinson, No. 150 Bridge street.

[Dealer in stoves, manufacturer of tin, copper, and sheet-iron ware. Agent for the Morning Glory, Heating, & Monumental Cooking Stove.]

	To covering shed roof		150 00
'72. Nov. 14.	To 2,699¼ f't roofing, @ 12		323 91
	" carpenters work (eave boards)		8 00
	" 76 f't gutter & spout, @ 20		15 20
	" 2 shoe elbows	" 40	80
'73. Mar. 19.	" 10½ f't gutter	" 20	2 10
	" 13½ " spout	" 18	2 34
	" 2 cornice-elbows	" 20	40
	" 1 shoe "		40
			513 15

Rec'd payment.

H. P. COLLINSON.

440 In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL. v. MARK YOUNG ET AL. } In equity. No. 3153.

Depositions of witness produced, sworn, and examined before the auditor of said court, on the 13th day of October, 1875, under the order of reference passed on the 14th day of June, 1875.

Present, Fred. W. Jones of counsel & solicitor for defendant Young.

MARK YOUNG, a witness of lawful age, being duly sworn, deposes & says:

Examined by Mr. FRED. W. JONES:

My name is Mark Young, & I reside in the city of Washington, D. C. I am the defendant to this suit.

Q. State the improvements which you have placed upon the
441 property in question since you purchased it, and their character.

A. William Gibson, a stone mason, I employed to do the stone work upon both the new and old building, and the amount of his claim, which I have paid, is $504.75, and I herewith file the receipted bill therefor and mark it Exh. M. Y. No. 1. I also employed Columbus Thomas, a carpenter, to do work on the mill, and have paid him $426.08 for material & labor, & I file herewith the receipted bill therefor, and mark it Exh. M. Y. No. 2. I also employed Richard A. Edmonson, a bricklayer, to do work on the mill, & have paid him therefor $365. The bill for this amount has been mislaid, but I will try to file a duplicate thereof. Mrs. H. P. Collinson furnished the tin that was used in roofing both properties; the amount of her claim is $513.15, which I have paid, and file herewith the receipted bill, & mark it Exh. M. Y. No. 3. I employed Albert C. Prather as the millwright; I paid him $1,500. I em-
442 ployed Mr. L. T. Cartwright, a carpenter, to build the new building; this was under contract; the amount of his claim is $1,500. I paid one Offutt, a painter, $50, and I paid $100 for labor in excavating tail race. I paid W. T. Duvall $100 for iron-work; also $40 for laying drain-pipe; also $238 for new elevators & buckets. I also paid W. H. White for painting $77.50; the receipted bill therefor I file herewith and mark it Exh. M. Y. No. 4. I also paid Robinson Brothers for iron work $74.88. I file herewith the receipted bill therefor, & mark it M. Y. No. 5. The work for which these respective amounts were paid by me was necessary, and of a permanent character.

I also paid Henry H. Dodge for 50 inches of water to be used for propelling the machinery of this property; I think the amount was $5,000. My deed, however, will show the exact amount, which I will produce hereafter. The property has been improved 50 per cent. by reason
443 of this additional water-power, and without it the mill would be worth nothing to me, because it could only run one pair of burrs, and with this water-power I could run two sets of burrs. The money I paid to A. Thomas Bradley, the trustee, for this property, he told me he had bought a house with it in Washington for the heirs, the complainants herein. I claim as compensation for my personal attention & supervision of the repairs, rebuilding, and remodeling of the property, which occupied off & on some three or four months, $2,000. I estimate

this amount as profits which I would have made, but for the interruption of my business.

M. YOUNG.

Sworn to and subscribed before me this 13th day of October, A. D. 1875.

THOMAS HOOD,
Auditor.

444 OCTOBER 14TH—at 12 m.

The witness, Mark Young, appears and desires to say that in relation to the amount paid Mr. Dodge for the 50 inches of water, is $5,000. Of this he is positive, as he has since looked at the deed.

M. YOUNG.

Sworn to and subscribed before me this 14th day of October, A. D. 1875.

THOMAS HOOD,
Auditor.

445 *Chesapeake & Ohio Canal Co. to Henry H. Dodge. Lease. Recorded March* 16, 1870—2.15 *p. m. Liber* 611, *folio* 283.

[Stamp $7.80.]

These presents made and concluded this seventeenth day of February, 1870, by and between the Chesapeake and Ohio Canal Company, of the first part, and Henry H. Dodge, of Georgetown, in the District of Columbia, of the second part, witnesseth:

That *that* for and in consideration of a compromise of the existing dispute between the said company and the said Dodge, and of a cancellation of the leases and contracts by and between the said company and the said Dodge, dated November 9 and Dec'b'r 28, 1865, and June 1st, 1866, with various supplements thereto respectively, and of a release of all claims arising on either side, hereby mutually agreed to and declared to be made, and in further consideration of the surrender to the
446 party of the first part by the party of the second part of his maps, surveys, and reports in relation to the repair and improvement of dam No. 1, and the works connected therewith, on the Georgetown levee of said canal, and of the further consideration of the rents and covenants hereinafter mentioned on the part of the said party of the second part, and his heirs, representatives, and assigns, to be paid and performed, as well as of the sum of five dollars, the receipt of which is hereby acknowledged, the said party of the first part hereby covenants and agrees that the existing grants of waste or surplus water or water power at Georgetown, D. C., yielding rents, shall be assumed as the maximum of the waste or surplus water power now disposable there, or on the said level, and on that basis the party of the first part hereby leases, grants, bargains, sells, and conveys unto the party of the second part, his heirs, representatives, and assigns, the waste or surplus water on the Georgetown level below dam No. 1, over and above the
447 said maximum, to the extent of and not to exceed fifteen hundred inches, now existing or which may hereafter be gained or made on the Georgetown level by repairing dam No. 1 and restoring it, and the works on said level connected therewith, to their original condition, or which may be gained or made from time to time on said level, by any subsequent legislation authorizing further repairs or improvements or increase of waste or surplus water or *if* water power thereon, at the

fixed and only rate of twenty-five cents per inch, canal measurement, per annum for the term of fifty years commencing from the date hereof, renewable hereafter for like periods or terms of years from time to time forever, at the fixed and only rate of fifty cents per inch, canal measurement, per annum, the same to be had and taken by the said Henry H. Dodge, his heirs, representatives, and assigns, at a point or points along or below the line of the premises leased by said company to said
448 Dodge, by indenture bearing even date herewith.

And the said party of the first part hereby further covenants and agrees with the said party of the second part, his heirs, representatives, and assigns, that he and they shall always be entitled, as first purchasers, on the terms aforesaid, to the extent of, but not to exceed, fifteen hundred inches of the first waste or surplus water or water-power on said level over and above said maximum, in such portions and at such times as it can be disposed of without detriment to the navigation of said canal, provided that this is not to be construed as a guaranty on the part of the company that said surplus shall reach any given amount.

And the said party of the first part further covenants and agrees with the party of the second part, his heirs, representatives, and assigns, that the said company, for common benefit, shall and will, in all present and in all future leases or privileges for the use of waste or surplus
449 water or water-power made or to be made by it on said level, cause the quantity of water so sold or used to be accurately measured through fixed *guages*; and, further, that the said company will not arbitrarily or capriciously use their feed-gates in such a way as to prevent the full and fair enjoyment by the party of the second part, his heirs, representatives, and assigns, of all the rights and privileges herein granted, or so as to interfere with the execution of the true spirit and bona-fide intention of this compromise hereby made and all the privileges hereby granted.

And the said party of the second part, for and in consideration of the premises, for himself, his heirs, representatives, and assigns, covenants and agrees with the party of the first part that he and they will at all times, during the continuance of this lease or grant and the renewals thereof, take and accept all such waste or surplus water or water-power to the extent of and not exceeding fifteen hundred inches, as may
450 be set of' or measured to him or them through the fixed *guages* aforesaid, according to the provisions hereof; and, further, that he and they shall and will pay on the first day of January, 1871, and on the same day in each and every year thereafter during the period aforesaid, for the same or for such portion of said fifteen hundred inches as may be so set off or measured, at the rates before stipulated, and that on failure to pay for the same as agreed, it shall and may be lawful for the said party of the first part, in addition to the usual legal remedies for the collection thereof, to shut off the supply of water hereby agreed to be made from each and every *guage* on which there is a failure to pay for the water supplied thereat, and to refuse to supply any further water through such *guage* until all such arrears for water supplied at such *guage* shall be fully paid.

And the party of the first part further covenants and agrees with the said Henry H. Dodge, his heirs, representatives, and assigns, that at any time during the continuance of this lease or grant, or any
451 renewal thereof, on the payment to it of ten dollars as a renewal fine, it will execute and deliver, or cause to be executed and delivered, to the said Dodge, his heirs, representatives, or assigns, at his or their request, a renewal of these presents, on the terms herein pro-

vided, for another term of fifty years, so that the same may be renewable and renewed from time to time forever.

These presents further witness that the said Chesapeake and Ohio Canal Company has constituted and appointed, and does hereby constitute and appoint, Josiah H. Gordon to be its attorney, for it and in its name, and as its act and deed, to acknowledge this instrument of writing before any person or persons having authority by law to take the said acknowledgment, in order that the same may be recorded.

In testimony whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed by its president.

[CORPORATE SEAL] JOSIAH H. GORDON,
President of the Chesapeake & Ohio Canal Co.
HENRY H. DODGE. [SEAL.]

Test:
D. C. TOMPSON.
BENJ. FAWCETT,
Clerk & Treas.

452 STATE OF MARYLAND,
Anne Arundel County, set. :

We, D. C. Tompson and James C. Welch, justices of the peace in and for the county of Anne Arundel aforesaid, in the State of Maryland, do certify that the Chesapeake & Ohio Canal Company, a party to a certain deed bearing date the 17 day of February, 1870, and hereto annexed, by Josiah H. Gordon, its president and attorney named in the said deed, for the purpose of acknowledging the same for and in the name of the within-named lessor, appeared before us in our county aforesaid, the said Josiah H. Gordon, being proved by the oath of creditable witnesses before us to be the president and attorney aforesaid, and to be the same who signed the said deed as president of the company, and the Josiah H. Gordon for and in the name of the company, acknowle'ged the same to be the act and deed of the said Chesapeake and Ohio Canal Company, and, at the same time, before us also personally
453 appeared Henry H. Dodge, a party to the said deed, the said Henry H. Dodge being proved by the oath of creditable witnesses before us to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hands and seals this 17th day of February, 1870.

[SEAL.] D. C. TOMPSON, *J. P.*
[SEAL.] JAS. C. WELCH, *J. P.*

STATE OF MARYLAND,
Anne Arundel County, set. :

I hereby certify that D. C. Tompson and James C. Welch, esquires, before whom the annexed acknowledgements were made, and who have thereto subscribed their names, were, at the time of so doing, justices of the peace of the State of Maryland, in and for Anne Arundel County, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affixed the seal of the circuit court for Anne Arrundel County this 17th day of February, 1870.

[COURT SEAL.] SPRIGG HARWOOD,
Clerk of the Circuit Court for A. A. Co.

[Stamp, 5 cts.]

454 ANNAPOLIS, *March* 4, 1870.

At a meeting of the president and directors of the Chesapeake and Ohio Canal Co., held on the 17 of February, 1870, the following resolution was offered and adopted:

"Resolved, That the lease of waste or surplus water on the Georgetown level, the lease of lands above Georgetown, and the surrender of leases and the contract between the Chesapeake and Ohio Canal Company and Henry H. Dodge, just read to the board, be affirmed, and the president be instructed to execute the same on behalf of said company."

Then upon the same day, after the execution of the above described instruments, the following resolution was offered and adopted:

"Resolved, That the lease of waste or surplus water or water-power on the Georgetown level, between the Chesapeake and Ohio Canal Company and Henry H. Dodge, and the lease of said company to said Dodge of certain lands between the said canal and the Potomac River
455 above Georgetown, and the surrender of leases, dated November 9th and December 28, 1865, and of a contract dated June 17, 1866, executed by the president under instructions from this board and submitted to the same, be and the same are respectively hereby accepted, ratified and confirmed."

I certify that the foregoing resolutions are true and correct copies from the journal of proceedings.

Attest:

[CORPORATE SEAL.] BENJ. FAWCETT,
Clerk & Treasurer.

[Stamp, 5 cts.]

456 *Henry H. Dodge to Mark Young.—Assignment recorded July 5th, 1875, 1 p. m., liber 653, folio 92.*

[Stamp, 50 cts.]

Know all men by these presents that I, Henry H. Dodge, of Georgetown, in the district of Columbia, for and in consideration of the sum of $1,250, receipt of which is hereby acknowledged, have assigned, transfered and set over, and do by these presents assign, transfer, and set over with Mark Young, of said Georgetown, one thirtieth part of the water leased to me by the Chesapeake and Ohio Canal Company by their water-lease, dated February 17, 1870, and recorded in liber 611, folio 282 of the Land Records of the District of Columbia, and of the title, interest, and estate conveyed to me by said lease, with all appurtenant privileges in the use of the said water, subject to the annual rent per square inch reserved in said lease to said canal company, being one-thirtieth part of the entire rent reserved in said water-lease as the proportion thereof to be paid by said Young.

In testimony whereof I have hereto set my hand and seal on this third day of July, A. D. 1871.

[SEAL.] HENRY H. DODGE.

Witness:

JENKIN THOMAS.

457 DISTRICT OF COLUMBIA, *to wit:*

Frederick W. Jones, being duly sworn, on oath, says:

I am counsel for the defendant in the above cause, and was never notified of the filing of the auditor's report, and did not know that the same was filed until the day that the cause was on the assignment of the general term calendar, at this (April, 1877) term, to wit, on the *the* 24th day of April, 1877; that I was not advised of the filing, and had not time to prepare exceptions to the same before the case was called for argument, and that I have been surprised by the action of the complainants in placing the same on the calendar of this term.

F. W. JONES.

Subscribed and sworn to this 26th day of April, 1877.

R. J. MEIGS, *Clk.*,
By R. J. MEIGS, JR., *Asst.*

458 Supreme court of the District of Columbia.

BRADLEY ET AL. *v.* YOUNG ET AL. } No. 3153. Equity.

Please take notice that on Monday morning (May 14th), in general term, we shall move for leave to file exceptions to the auditor's report in the case of Bradley et al. v. Young et als. No. 3153. Equity.

May 11th, 1877.

Yours resp'y,
(Signed)

W. S. COX.
F. W. JONES.

To Messrs. DAVIDGE & FENDALL, *Sol'rs.*

Original of above delivered to W. D. Davidge, esq., May 11, 1877.

EDWARD SWANN.

459 Supreme court of the District of Columbia.

P. M. BRADLEY ET AL. *vs.* MARK YOUNG ET AL. } No. 3153. Equity.

And now comes the defendant, Mark Young, and excepts to the auditor's report filed in this cause, and for grounds of exceptions say:

1. That the auditor in his said report allows nothing for permanent betterments and improvements upon the property, but simply reports that they were made by said Young "in his own wrong," whereas the reference required him to report what they were, and the cost thereof, and how far the value of the property had been augmented thereby.

2. That the auditor has ont reported "what repairs had been made by def't Young and the cost thereof, and how far they were such as he was bound to make, &c.," as required by the order of reference, but groups the whole expenditures both for water-power, permanent better-
460 ments, and repairs, & in schedule A, which shows $12,509.38 as the amount expended by defendant and claimed by him, not informing the court as to the decree that should be made in the premises.

WALTER S. COX &
F. W. JONES,
For Def't Young.

461 In the supreme court of the District of Columbia in general term, June 19, 1877.

POWELL M. BRADLEY, FREDERICK W. BRADley, and Maria G. Bradley, by Richard B. L. Macrae, their guardian and next friend,
vs.
MARK YOUNG, A. THOMAS BRADLEY, FREDerick W. Jones, Walter S. Cox, and others.

This cause having been referred to the auditor by the decree dated on or about the 19th of June, 1875, and the said auditor having filed his report and no exceptions having been filed thereto, now came on further to be heard, and thereupon on consideration thereof the court doth this 19th of June, 1877, order, adjudge, and decree that the sale from A. Thomas Bradley to Mark Young in the proceedings mentioned
462 was without authority of law and null and void; that the deed from said Bradley to said Young dated on or about the 10th of June, 1871, and the deed from said Mark Young to Frederick W. Jones dated on or about said date, and the deed from said Mark Young to Walter S. Cox dated on or about the 1st of July, 1871, be, and the same are hereby, decreed to be severally null and void and are hereby vacated and set aside; that the said Mark Young, Frederick W. Jones, and Walter S. Cox, be, and they are hereby, required to convey and release unto the complainants, Powell M. Bradley, Frederick W. Bradley, and Maria G. Bradley, as tenants in common in fee simple, all and singular the parts of lots in the bill mentioned and particularly described in the said deed from A. Thomas Bradley to Mark Young, together with the water and other privileges, and the rights and appurtenances to the said lots and premises, and all the estate and interest of whatsoever kind mentioned in said deed and intended thereby to be conveyed,
463 and also the estate and interest released and conveyed to said Mark Young or mentioned and intended so to be by virtue of the deed of release from Robert Ould in the proceedings mentioned and dated on or about the 16th of June, 1871.

And upon the neglect or refusal of the said Mark Young, Frederick W. Jones, and Walter S. Cox, or either of them, to release and convey as aforesaid, within thirty days from the date hereof, it is further ordered, adjudged, and decreed that this decree shall stand, and be considered and taken, and have the same operation and effect as such conveyance and release.

And it is further ordered, adjudged, and decreed, that the said Mark Young, within thirty days from the date hereof, delivered possession of all and singular the said parts of lots and premises to the said Richard B. L. Macrae, the guardian of the said complainants, or his agent; and that upon the demand of such possession and the refusal or
464 failure of said Mark Young so to deliver, the complainants shall be entitled to the usual process for such delivery.

It is further ordered, adjudged, and decreed that there was due to the complainant by the said Mark Young, on the 15th day of June, 1877, for the rent of the portion of said lots of ground and premises leased to him, and interest on the quarterly payments in arrear, the sum of ten thousand five hundred and seventy-one (10,571) dollars and sixty (60) cents, and that the said complainants recover the said amount and have executed therefor, and that they further recover, for any period during which the said Mark Young shall hold possession of the said premises

after this date, at the rate of fifteen hundred dollars per annum, payable quarter-yearly on the 11th days of July, October, January, and April, with interest on any rent in arrear, and have execution from time to time therefor.

It is further ordered, adjudged, and decreed that the said Mark Young pay the costs of this suit, to be taxed by the clerk.

465 In the supreme court of the District of Columbia.

POWELL M. BRADLEY ET AL. *v.* MARK YOUNG ET AL. } No. 3153. Eq. doc. 12.

Take notice, that on Wednesday next, at the hour of 12 m., or as soon thereafter as the motion can be heard, we will move his honor, Judge Humphreys, to vacate the approval of the appeal bond, on the ground of the insufficiency of the penalty thereof. July 24th, 1877.

DAVIDGE & FENDALL.

Service acknowledged this 24th day of July, 1877.

F. W. JONES.

Mr. W. S. Cox is absent.

Ordered this 25th day of July, 1877, that the penalty of the appeal bond in this case be increased to twenty thousand dollars within ten days from the date hereof.

466 Supreme court of the District of Columbia.

BRADLEY ET AL. *vs.* YOUNG ET AL. } 3153. Equity.

Please take notice that on Wednesday, the 1st of August, 1877, at 11 o'clock a. m., or so soon as may be practicable on that day, I shall ask one of the justices of the court to approve the bonds to prosecute the appeal of said defendant Young to the Supreme Court of the United States from the decree rendered in the above cause. The names and addresses of the sureties are as follows, to wit:

Abraham H. Herr, Congress, near Stoddart st., Georgetown, D. C.
Robert C. Hewett, 632 M st. N. W., Washington, D. C.
Samuel C. McDowell, 132 C st. N. E., " "
William M. Galt, 208 E st. N. W., " "

Very resp'y,

F. W. JONES,
Att'y for Def't.

Service acknowledge l.

W. D. DAVIDGE,
Att'y for Plff's.

JULY 30, 1877.

467 In the supreme court of the District of Columbia, the day of 18 .

POWELL M. BRADLEY ET AL.
vs.
MARK YOUNG ET AL.
} Equity. No. 3153. In error.

Know all men by these presents that we, Mark Young as principal, and Robert C. Hewett, Samuel C. McDowell, and William M. Galt, as sureties, are bound unto the above-named complainants in the sum of fifteen thousand dollars, to be paid to the said complainants, their *his* executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 30th day of July, 1877.

Whereas the above named Mark Young has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia;

Now, therefore, the condition of this obligation is, that if the above-named Mark Young shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

M. YOUNG. [SEAL.]
R. C. HEWETT. [SEAL.]
S. C. McDOWELL. [SEAL.]
W. M. GALT. [SEAL.]

Sealed and delivered in presence of—
F. W. JONES.

Approved, August 1, 1877.

D. C. HUMPHREYS,
Justice.

468 In the supreme court of the District of Columbia, the 19 day of July, 1877.

POWELL M. BRADLEY, FREDERICK W. BRADley, Maria G. Bradley, infants, by guardian and next friend, Richard B. L. Macrae,
vs.
MARK YOUNG, A. THOMAS BRADLEY, Frederick W. Jones, Henry H. Dodge, Walter S. Cox, Christopher C. Wolcott and wife, Elizabeth W. Wolcott.
} At law. No. . In error.

Know all men by these presents, that we, Mark Young as principal, and Abraham H. Herr as surety, are bound unto the above-named complainants in the sum of five thousand dollars, to be paid to the said complainants, their executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 19 day of July, 1877.

Whereas the above-named Mark Young has prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia in general term;

Now, therefore, the condition of this obligation is, that if the above-named Mark Young shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

M. YOUNG. [SEAL.]
A. H. HERR. [SEAL.]

Sealed and delivered in presence of—
F. W. JONES.

Approved July 20, 1877..

DAVID C. HUMPHREYS,
Asso. Justice, S. C. D. C.

Authentication of record.—Clerk's certificate.

CLERK'S OFFICE,
Supreme court of the District of Columbia :

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 8th day of October, 1877.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the fore going attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 8th day of Oct., 1877.

[SEAL.] D. K. CARTTER,
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 8th day of October, 1877.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Assistant Clerk.

(Indorsement on cover:) No. 257. Mark Young, appellant, vs. Powell M. Bradley et al. Dist. of Columbia, sup. court. Filed 9th October, 1877.

REC. 257—10

OFFICE SUPREME COURT U. S.
FILED
APR 7 1880
D. W. MIDDLETON, Clerk.

IN THE

Supreme Court of the United States.

No. 257.—October Term, 1879.

MARK YOUNG, APPELLANT,

vs.

POWELL M. BRADLEY ET AL., APPELLEES.

BRIEF FOR APPELLANT.

F. W. JONES,
ENOCH TOTTEN,
Counsel for Appellant.

J. L. Pearson, Printer, 9th and D sts., Washington.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879.

MARK YOUNG, APPELLANT,
vs.
POWELL M. BRADLEY ET AL., APPELLEES.
No. 257.

Brief for Appellant.

This is an appeal from a decree of the Supreme Court of the District of Columbia.

STATEMENT OF FACTS.

The appellees, who are infants, exhibited their bill in the Supreme Court of the District of Columbia, by their next friend, on the 12th day of April, 1873; the principal complaint made therein is that the surviving trustee and executor of the will of William A. Bradley, deceased, sold to the appellant certain property situated in Georgetown, without authority so to do, and for a grossly inadequate consideration.—(3 and 4.)

William A. Bradley, late of the city of Washington, on the 7th day of August, 1876, made his last will and testament.—(5.) By the terms of this instrument he required his executors, who are named in the will, to pay his debts and funeral expenses; he then proceeds as follows: "I give, devise, and bequeath all of my estate, real, personal,

and mixed, of whatsoever kind it may be, and wheresoever situated, to my son, William A. Bradley, junior, and my (his) cousin, A. Thomas Bradley, their heirs, executors, and administrators, the survivor of them, his heirs, executors, and administrators, in trust," in the first place, to set apart the family residence, with the household effects, pictures, plate, books, and other chattels therein at the time of his death, to his wife, for her use and benefit during her natural life. He also directs that "out of the net income derived from my (his) said estate of every sort, to pay to her one equal third part annually" for and during life. The will then provides that the trustees, or the survivor of them, shall divide all of the estate immediately after the testator's death, into four equal parts, these parts to be allotted as follows: To his son, William A. Bradley, jr., one part; to the children of William A. Bradley, jr., (now or hereafter born in lawful wedlock,) one part, and one part to each of his two married daughters, Mrs. Linton and Mrs. Edelin.

There is a direction in the will that the share of Mrs. Edelin shall include the property known as the "Corning property," and it contains the further direction that "if either or both of my (his) said daughters die without issue, either before or after my (his) death, her or their said fourth parts shall go to the children of my (his) said son, now and hereafter born, share and share alike." It was provided that upon the death of the widow the family residence should be divided equally between the two married daughters, and that the personal property should be taken possession of by the trustees, who should make an "equal distribution of the same in kind as to the whole, or in part as to some, and in the proceeds of sales as to others," to the same parties and in the same proportions as the real estate. There was a special provision that, in case of the death of Mrs. Edelin without issue, the "Corning property" should be conveyed in fee simple by the trustees to Dr. Edelin, the husband of Mrs. Edelin, in case he should

survive his wife and the testator. The executors or trustees were directed to hold the portions of the two daughters during their respective natural lives in trust for their sole and separate use, free from the control of their present or future husbands, so that their shares should not be liable for the debts of such husbands. It was also provided that if either of the said daughters should die before or after the testator, leaving issue, such issue should have the mother's share, to be held by the trustees or the survivor of them, in trust for such issue, until the youngest should attain the age of twenty years, or until, in the discretion of the said trustees, or the survivor, it should appear best to terminate said trust. Then follows this clause: "Next, I direct that upon the division into four parts hereinbefore prescribed, my said son, William A. Bradley, junior, or his heirs, shall have and receive his portion immediately, except only his distributive share in the personal property left to my wife for her life, and free from any and all trusts whatsoever contained in this will." The first provision of the will is this general clause:

"*Item Second.* I give and bestow upon my said trustees and the survivors of them the largest powers and discretion in taking charge of and managing my estate, and authorize them and the survivor to have, hold, direct, and control the aforesaid trust property, according to their or the survivor's best judgment, and to sell and dispose of the same, or any parts thereof, from time to time, subject only to the aforesaid trusts, and as freely as I myself could do if living; and also in all things to have the same powers, rights, privileges, benefits, advantages as I myself have, or might have, if living, in all and any contracts, bargains, agreements, companies, or other compacts to which I am now or may become a party."

In the month of August, 1867, (1) the testator died, leaving his widow, his son, William A. Bradley (one of the executors), and the two married daughters, him surviving. Prior to his death, however, he himself conveyed to Dr. Edelin the "Corning property." (2) In the fall of

1868 his widow died ; in March, 1869, the son (and executor), William A. Bradley, also died ; Mrs. Edelin died in the spring of 1870, and Mrs. Linton died in January, 1871, neither of the daughters leaving issue. William A. Bradley, the son, left a widow and three children, the complainants. These children, after the death of Mrs. Linton, were the sole surviving heirs of the testator.

Immediately after the death of the testator, the executors and trustees named in the will took possession of all the estate of the testator, and continued to manage the estate together, until William A. Bradley, who was a surgeon in the army, went to California in 1868. In the spring of 1869, William A. Bradley died.—(29.) The surviving trustee, A. Thomas Bradley, from that date continued in possession and in the management of the estate, as surviving executor and trustee.

At the urgent request (29) of the beneficiaries no division was made of the property into four parts, as directed by the will. The beneficiaries insisted that the net income should be divided into four parts and be distributed according to the terms of the will.—(29.) The widow of the testator continued to occupy the family residence, and to enjoy the personal property, until the time of her death, and regularly received the one-third of the net income of the estate.—(30.) The surviving trustee and executor, after the death of his co-trustee and co-executor, continued in the undisturbed and undisputed management and possession of the whole estate up to some time in 1874, when, by a proceeding in equity, his duties as executor and trustee were determined.

Some time early in the year 1871, the defendant, Mark Young, who was then and for a long time had been a tenant on the premises mentioned in the proceedings, under a lease made by the testator, notified the surviving trustee that, in consequence of the dilapidated condition of the premises then occupied by him, he would not continue his holding longer than the termination of his lease, (30,)

unless the property should be put in good condition.—(30.) The improvements required to put the mill into a reasonably good condition were very extensive, and would have cost a large sum of money, much more than the surviving trustee was able or willing to expend upon the property.—(21, 30, 31.) After he had been so notified, and after taking counsel, he proposed to Mr. Young to purchase the property, and submitted to him an offer in writing.—(28.) He urged upon Young to sell the property. Thereupon, and in the month of June, 1871, the terms of sale having been agreed upon, the surviving trustee executed, in due form of law, and delivered a deed of conveyance of the property in question to Young.—(9.) Young continued in possession of the property, and expended large sums of money in making permanent improvements and necessary repairs. His disbursements amounted in all to about $10,000.—(64, 94, 95, 96.) These expenditures contributed to the permanent benefit and improvement of the property and included about $5,000 for additional water-power. The price agreed upon between him and the surviving trustee was $13,900, all of which has been paid, except the last deferred payment, amounting to $4,633.33, and upon this he has paid the accrued interest up to the date of this suit. This balance he has always been ready to pay.

The property in controversy here is situated in Georgetown, and is bounded on the south by Water street, which is a public thoroughfare, seventy feet wide; and on the west by Fayette street, also a public street, and sixty feet wide; on the north, it extends to the Chesapeake and Ohio Canal.—(62.) The ground, at the time the bill was filed, was improved by an old mill, by a warehouse and by a corn-house, the latter of which was built by the defendant, Young.—(67.) A singular feature in the case is that one-half of the mill structure stands upon the public street.—(63.) One of the questions made in the bill relates to the value of the property; it is charged that the price for

which the trustee sold the property was "grossly inadequate."—(4.) On this subject, the defendant called five witnesses, who made various estimates as to the value of the property; these witnesses considered the property in reference to its use in connection with the transshipment of coal from the canal to the Potomac River, and testified mainly in reference to that business. It seems that the persons engaged in this business have been accustomed to convey coal from the canal to the river by means of an elevated trestlework, which passed over Water street and thence over the lots abutting upon the river.

The testator died seized also of a lot lying south of the "mill property" and of Water street and abutting on the river, over which lot coal might be passed from the property sold to Young by means of such trestle-work, and the complainants' witnesses are quite harmonious in the opinion that the value of either of them in the coal trade depended upon the use of the two properties in conjunction with each other; without being used together, each of them would be comparatively valueless.—(36,41,51,52,55.) The estimates put upon the property for use in the coal business and in connection with the use of Water street and of the property south of Water street, was about $30,000; these estimates included the lot south of Water street, and generally included the improvements put upon the property by Young after the sale, together with the additional water privileges purchased by him.

It will not be forgotten, in considering this evidence, that Young was a miller, engaged in that business, and that he knew nothing of the coal business, and didn't intend to engage in it.—(63.) The property had been rented to him by the testator in his lifetime for the purpose of manufacturing flour, and not for the coal business.

The defendant called nearly a dozen witnesses, exclusive of himself, who testified as to the value of the property, some of whom were the owners of mills in the immediate vicinity. The highest price put upon the property by

these witnesses was $14,000, and the lowest was $8,000.—(66, 76, 84, 88, 90, 103, 107, 108, 111, 113.) Young, himself, testifies (66) that the property was worth $12,000 and that the "good will" of the establishment, which he had created by his labor of nine years, was worth $2,000. He took the mill from Bradley when it was comparatively worthless, and by his skill and industry made it valuable. The weight of testimony is decidedly against the averment in the bill that the price was grossly inadequate.

Akin to this charge made in the bill is the other charge therein, that through the mistake or ignorance of Mr. Bradley, more ground was included in the proposal to sell and the conveyance than Mr. Bradley intended to sell and convey. The proposition to sell was submitted by the trustee himself and in writing (28), and the description contained in the proposal is substantially the same as that in the deed.—(9.) The parties had the matter of the sale under consideration for about three months (60), and the deed of conveyance remained in Bradley's hands for many days.—(62.) Bradley was a man of mature years and a practicing lawyer at the time of the sale, and also called in able counsel to advise him.

Upon an examination of the title to the property the land records disclosed the existence of several apparent incumbrances, and much time and trouble was expended in removing them. One of the incumbrances seems to have been a deed of trust, and a release thereof was procured and made to the purchaser, Mr. Young.—(17.)

The court below decided the case upon the point that the executor was without power to sell the property, (see 2 MacArthur,) and decreed that the conveyance was void, and should be set aside, and that Young, Cox, and Jones should convey the property to the complainants. The decree also requires the defendant Young to surrender possession of the property to the guardian of the complainants, and also to convey the estate to them which had been transferred to him by means of the release of the outstand-

ing trust deed. The court also rendered a personal judgment against Young and in favor of the complainants for the sum of $10,571. In addition to this the court undertook to render a judgment against him for installments of rent not yet due and which might accrue in the future.

From this decree the defendant Young appealed to this court.

Assignment of Errors.

1. The court below erred in its opinion that the surviving trustee was without power to make the sale and conveyance to Mark Young of June 10, 1871, and in decreeing that the same was null and void, and that it should be vacated.

2. In decreeing that the defendants Young and Bradley should convey to the complainants the estate and interest conveyed to Mark Young, by virtue of the deed from Robert Ould, in the proceedings mentioned.

3. By rendering a personal decree for the payment of $10,571.00 against the appellant.

4. By charging Mark Young for the use and occupation of said premises at the excessive rate of $1,500.00 per annum; and further, because no credit was given to him for his expenditures for permanent improvements, privileges, and betterments upon and about the property.

5. By refusing to take any account of and allow credit to the appellant for $9,266.66 by him paid to the qualified executor of the estate of William A. Bradley, deceased, together with interest thereon.

Argument and Authorities.

I.

There is no dispute in this case about the fact that Bradley was the duly qualified executor of the estate in question, and there is no complaint made in the bill or otherwise as to the proper application of the purchase-money, amounting to between nine and ten thousand dollars, paid by Young to the executor.

The bill proceeds solely upon the two grounds that there was a mistake on the part of the trustee, or that a fraud was practiced upon the surviving trustee by the purchaser, by which he received the conveyance for a less sum of money than the property conveyed was actually worth, and that, in consequence of the fact that all the devisees in the will, except the infant children of William A. Bradley, jr., having died, the whole estate vested in these children, and that thereupon the trust created by the will became determined from that fact, and that the power of sale vested in the trustees, or the survivor of them, was at an end.

The bill seeks to set aside the various conveyances mentioned, to secure re-conveyances, to obtain an accounting as to the rents, and for possession of the premises.

The charge that Bradley was overreached by Young, or that Bradley made a mistake, and that the proposal to sell and the conveyance made in pursuance of it transferred more land than Bradley intended to sell, is not very vigorously or clearly averred in the bill; and the proof offered to support is still less satisfactory. Bradley says in his deposition (31), that after considering the proposed repairs to the mill he could not see how the estate could bear such a charge, and then proceeds: "After consulting with one whom I considered to be a good friend to the complainants, and with whom I had always consulted in matters relative to the estate, with his assent, I offered to sell the mill property then in his occupation to Mark Young." This offer was made *verbally* to Young, in the presence of his attorney. Now this gentleman with whom Mr. Bradley consulted about this matter of business was John C. Kennedy, Esq., (60, 63,) an eminent lawyer of this city, especially remarkable for his skill, care, and exactness in just such transactions as was this. This *verbal* offer was afterwards reduced to writing (28) and submitted to Young by Bradley. The subject of the transfer had been a matter of discussion for probably three months, (60,) and the proposal remained in the hands of Mr.

Bradley two or three days before he executed it, and the deed itself was in his hands many days before he executed and acknowledged it. Mr. Jones, the attorney in the transaction for the defendant Young says, with considerable emphasis, that "there could have been no mistake on the part of Mr. Bradley, Mr. Kennedy, Mr. Young, or myself in regard to the quantity to be conveyed, *because it must have been repeated many times, that it was all the property north of Water street and west of Fayette street.*"—(60.) Young fully corroborates this statement and asserts that the property which Bradley proposed to sell him was "all the property north of Water street that belonged to the Bradley estate—north of Water street and west of Fayette street."—(62.) He also says the dimensions of the property were discussed "a half a dozen times," between himself and Bradley. This should leave no doubt about the fact that the property actually conveyed was the property intended to be conveyed by both parties. At all events the written documents cannot be put aside or varied by evidence so meager as that offered by the complainants; in addition to this, the burthen of proof rests upon the complainants who make the charge of fraud or mistake; if there was any fraud or mistake Mr. Kennedy, who was the especial friend of the complainants, must have known it. Why was he not called and examined upon that point by the counsel for the complainants? The omission of Mr. Kennedy's deposition on this question is very suggestive. He was the friend and advisory counsel in behalf of the complainants and the defendants could not properly call him.

The charge that the price was grossly inadequate is emphatically denied in the answer of Young, and the weight of evidence clearly supports the averments in said answer. What is the reasonable value of premises like those in controversy, is one which is largely a matter of opinion, and one upon which witnesses will nearly always differ; much depends upon the peculiar experience or business of the witnesses. In this case the witnesses of the defendant

outnumber those of the complainants, and very many of them are men who should be well acquainted with the subject-matter about which they were especially interrogated.

The rule of law in such cases, now well established in this country, is, that the sale must be so grossly inadequate as to shock the conscience, or to indicate that the trustee who made the sale has been guilty of misconduct or fraud. —(Johnson vs. Dorsey, 7 Gill, 269; White vs. Wilson, 14 Vesey, 151; Woodhull vs. Osborn; 2 Edw., 616; Am. Ins. Co. vs. Oakland, 9 Page, 250; Williamson vs. Dale, 3 John. Ch., 290; Cohen vs. Wagner, 6 Gill, 236; Duncan vs. Dodd, 2 Page, 100; Cooper vs. Galbraith, 3 Wash., 546; West vs. Davis, 4 McLean, 241; Duncan vs. Saunders, 5 Ill., 475; Coleman vs. Bank, 2 Strobh. Eq., 285; Reed vs. Brooks, 2 Little, 127; Wallace vs. Beyer, 25 Iowa, 456; Comstock vs. People, 49 Ill., 158; McMullen vs. Gable, 47 Ill., 67; H & S. R. R. Co. vs. Brown, 43 Mo., 294; Morlatt vs. Warwick, 3 Green, N. J., 108; Clark vs. F. S. & T. Co., (Oct. T., 1879.)

II.

The question remaining for our consideration now is, whether or not, upon these facts, the conveyance made by A. Thomas Bradley was a valid conveyance. The Supreme Court of the District were unanimous in the opinion that it was void for want of power in the surviving trustee, and the case was disposed of on that point exclusively.

A slight examination of the will (5) of Wm. A. Bradley, senior, will disclose the marked intention of the testator in this case, to give the trustees and the survivor the legal title to the estate. This is apparent from the apt technical words used by him, and also from the duties imposed upon the trustees by the will. The language is such as is usually employed to convey an estate of inheritance: "I give, devise, and bequeath all of my estate, real, per-

sonal, and mixed, of whatsoever kind it may be, and wheresoever situated, to my son William A. Bradley, jr., and my cousin A. Thomas Bradley, their *heirs*, executors, and administrators, the survivor of them, his *heirs*, executors, and administrators." There is no stronger language known to the law by which an estate of inheritance can be conveyed. The intention of the testator could not be carried out, nor could the trustees perform the duties imposed upon them, with a less estate. The duties charged by the will upon the trustees are of such a character as require, according to the adjudged cases, the holding of the fee.

The very contingency which has happened, to wit, the death of all the heirs except the infant children of William A. Bradley, jr., was probably in the mind of the testator when he wrote the concluding clause of the will, giving the trustees absolute control of the estate, subject only to the few exceptional matters of the will.

The power given to them is a power coupled with an interest, and not a mere naked power. The rule is, that a devise of the land *to executors* to sell passes the interest in it, but a devise that the executors shall sell the land, or that the lands shall be sold by the executors, gives them but a power.—(Sugden on Powers, 137; Powell on Devises, 292, 301, 303; Perry on Trusts, 309.) A devise to two and to the survivor and his heirs, will be held to create a fee in the trustees and the survivor, unless the character of the trust is such as to require a different estate.—(Lewin on Trusts, 176, 177; 3 Redfield on Wills (Part III.), 555.) A devise to executors to sell, or to distribute for the good of his soul, or if he devise that the rents and profits of the estate be paid to his wife until his son shall arrive at full age, the trust is one coupled with an interest and carries with it the fee.—(Powell on Devises, 301; 1 Sugden on Powers, 189; 4 Kent, 357 (321); see, also, Peter vs. Beverly 10 Peters, 532; Osgood vs. Franklin, 2 John. Ch., 20, and 14 John., 527; Jackson vs. Burtis, 14 John., 391; 1 Williams on Executors, 654, (Am. ed., 1877.)

It has been held in a case where the will directed the trustees to pay annuities out of the rents and profits, and to raise money on mortgage to pay off debts and supply deficiencies from sale of personalty, that it was necessary that they should take the fee to carry into execution the intention of the testator.—(Blagrave vs. Blagrave, 4 Exch., 550.) In this case Bradley required that one-third of the net income of his "estate of every sort" should be paid by the trustees to the widow during her life; that they should "convey" to Dr. Edelin the "Corning property;" that they should allot one-fourth part to the children of W. A. Bradley, jr., "now or hereafter born;" that they should hold the share of each of the daughters during life for their sole use and benefit, and in case of the death of both or either of them, leaving issue, to hold the share or shares for the children until the youngest should attain the age of twenty years; that after the death of the widow they should divide the family residence between the two daughters (which would require a sale), and to divide the personal property in the house, or to sell it and divide the proceeds equally amongst all the heirs. To perform these trusts the trustees must necessarily have taken a fee. In addition to this view of the case, the final clause of the will can leave no possible doubt as to the intention; after having allotted these undivided portions of the estate to the heirs, he clothes the trustees with the "largest powers and discretion" in reference to the management of his estate, and expressly authorizes them according to their best judgment "to have, hold, direct, and control" the estate, and "to sell and dispose of" it, or any part of it, "from time to time," as freely as he could do if living.

Without the legal estate being vested in them how could the trustees pay to the widow "one equal third part" of the income derived from "his said estate of every sort?" How could they comply with the direction to allot one-fourth part to the children of the son "now or *hereafter to be born* in lawful wedlock," without retaining the legal title

until the possibility of other children being born to the son should cease? How could they divide the family residence between the two daughters without making conveyances? If they were not invested with the legal title how could they "sell and dispose of" the property "from time to time" as "freely" as the testator could have done while living?

All the provisions of the will must be held to be subservient to the direction to pay one-third of the proceeds to the widow during her life, and it was so construed by the beneficiaries. Without the provision to pay one-third of the rents to the widow, she could not have received her dower-interest or its equivalent. It surely was not the intention of the testator to deprive the widow of her dower-right or to impose upon her the acceptance of the family residence on New York avenue as an equivalent therefor. It is plain that the use of this house was not an equivalent. The price of the house is fixed by the will at $10,000. The duty imposed upon the trustees to turn over to the widow one-third of the net issues of the estate, and the unrestricted and absolute power to sell "from time to time," should be conclusive upon this branch of the case, without reference to authorities.

In a case in Massachusetts, a testator devised his undivided real estate to his children and grandchildren in various proportions, the share of one child to be under the control of the executors named. In a subsequent part of the will he authorized the exeeutors, in their discretion, to sell a part or the whole of his real estate. It was held that the devises to the heirs must yield to the power of the executors to sell.—(Pratt vs. Rice, 7 Cush., 209.) That case was unlike the present, in that the devise was to the heirs, and not to the executors, while here the will, by appropriate technical language, devises the realty to the executors.

When the words of the devise to the trustees are sufficient to create a fee, and the trustees have a discretion to

deal with the estate as their own, or as the testator might have done if living, the trustees will be held to take a fee.—(Watson vs. Pearson, 2 Exch., 581; Blagrave vs. Blagrave, 4 Exch., 550; Rockham vs. Siddall, 1 Macn. & Gord., 607; 3 Redfield on Wills, 536; see, also, Perry on Trusts, § 313 to § 320; Neilson vs. Lagow, 12 How., 110; Braman vs. Stiles, 2 Pick., 461; Hough's Will, 4 De Gex & Sm., 371; *Re* Turner, 2 De G., F., & Jones, 527; Lewin on Trusts, 177.)

It is insisted by the complainants in this bill that the powers of the trustees had reference solely to the trust estates devised by the will to the two married daughters and their issue, and that upon the death of those daughters without issue and the death of the beneficiaries under the will, other than the children of William A. Bradley, jr., the powers of the trustees became extinguished, and that the sale made by the surviving trustee to Young was, therefore, void.

The power to make this conveyance must be found in the will, if it existed. That instrument is drawn with elaborate care and, although it may not seem clear or consistent in all its points, upon first examination, yet the apparent inconsistencies can be readily reconciled without violence to the language.

The instrument begins with a direction to the executors named therein to pay the testator's "just debts and funeral expenses." Immediately following this is a provision by which he proceeds to "give, devise, and bequeath" all of his "estate, real, personal, and mixed," to his son and his cousin, "in trust" for the purposes by him specified in the will. After stating the various dispositions of the estate, the will closes with a general power of sale and it is in the following language: "I give and bestow upon my said trustees, and the survivor of them, the largest powers and discretion in taking charge of and managing my estate, and authorize them and the survivor to have, hold, direct, and control the aforesaid trust property according to their,

or the survivor's, best judgment, and to sell and dispose of the same, or any parts thereof, from time to time, subject only to the aforesaid trusts, and as freely as I myself could do if living."

This is very broad language. If the testator himself had been living could he or not have sold the property in controversy, to Mark Young, without interfering with the aforesaid trusts? What were the "trusts" which were not subordinated to this plenary power of sale? It is very clear that the house on New York avenue, which he directed to be "set apart" for the use and benefit of his wife, with the furniture, &c., could not be sold by the trustees, at least during the lifetime of the widow, and it is equally clear that the "Corning property" was not intended to be sold.

Mr. Jarman states in one of his rules for the construction of wills, (2 Jar. on Wills, 523,) "that all the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but, when several points are absolutely irreconcilable, the latter must prevail." If any preference is to be made in reference to the order in which the clause is inserted in the will, the last is entitled to it rather than the first.—(Pratt vs. Rice, 6 Cush., 212.)

If the power to sell existed up to the time when the infant children became sole heirs-at-law and sole beneficiaries, the reasons for its continuance were then greater than ever before; because the infant children were incapable of managing the estate. If the mother of these children considered that she was entitled to the possession of the property by virtue of the will of William A. Bradley, jr., she should have asserted her claim to possession through the courts. But she was silent and no objection was made to the management of the estate by Bradley, under the power given him by the will of his testator, until nearly two years after the conveyance to Young. This bill was filed within about one year after the marriage of the widow of William A. Bradley, jr.

The second paragraph of the instrument contains those provisions relating to a division of the estate; the language is broad enough to cover anything except the Corning property: "I direct," says the testator, "my said trustees, and the survivor of them, to divide *all of my said estate*, immediately after my death, including that which was real, personal, or mixed, into four equal parts;" upon the division being made they are directed to "allot" one part to William A. Bradley, jr., his son, one part "to the children" of said son "now or hereafter born in lawful wedlock," and the other two parts to his two daughters.

What did the testator mean when he said the trustees should, "immediately after his death," make this sub-division? That it should be done before the debts and funeral expenses were paid or that it should be done after the business of the estate had been well settled? The true interpretation to be put upon this language is that this was to be done within the discretion of the trustees. Some light is thrown upon this provision by that clause preceding the general power; he there directs that William A. Bradley, jr., his son, or, in the event of his death, "his heirs" shall immediately "have and receive" his portion, "free from any and all trusts contained in this will." This clause leaves no room for doubt that the testator intended that the trustees, after the division into four parts, should keep all the property so divided in their own possession and under their own control, except that part which was to go to the son and co-trustee, when the testator said the trustees should "allot" these portions he did not mean that they should be conveyed and turned over: the portion of the children could not be conveyed to them, because they were infants in the first place, and in the second place that portion was to go, not to the children then *in esse*, but to all this son's children then or thereafter "born in lawful wedlock." Of course the children's portion could not be conveyed or turned over to them, before the death of William A. Bradley, jr., even if that event had not happened

in fifty years. There seems to be an inconsistency in the provision requiring the trustee, "out of the net income derived from *said estate of every sort*, to pay to her (his wife) one equal third part annually * * * so long as she shall live," and that clause directing that the son "shall have and receive his portion immediately" and "free from any and all trusts whatever contained in this will." But practically this seems not to have given rise to any dispute, inasmuch as the widow was actually paid by the trustees "the one-third part of the net income as prescribed by the will."—(p. 30.)

This discrepancy is not material in determining the question as to the power of sale. If, immediately after the testator's death, it had been found necessary, in order to pay off the debts and preserve the property, that the "Mill property" in dispute should be sold, and it had been sold by the trustees to the appellant, there could have been no question about the validity of the title in view of the broad powers of sale contained in the will. Was the situation so different in 1871, from the one just supposed, as to render a sale made by the surviving trustee in good faith, and for a fair price, null and void? No division of the property, had ever been made and no portion had ever been allotted to any one. The defendant Bradley urged that this division and allotment should be made, but it was not done, because "his three children, who are of age, and William A. Bradley, jr., who represented his children, always preferred that the estate should remain in bulk and undivided, and the net income should be divided into four parts and distributed under the will"—(30.) From the choice and agreement of the beneficiaries themselves the estate was preserved, in the hands of the trustees, in nearly the same condition as when left by the testator; and if it is true that the trustees could have sold the "Mill property" immediately after the death of the testator, it is not easy to perceive why they (or the survivor) could not exercise the same power in 1871.

It is difficult to understand the argument, which seems to be relied upon, that because the infant children had become the sole heirs-at-law, as well as the sole beneficiaries under the will, the trustees' estate and power under the will were at an end. These beneficiaries and heirs were all infants of tender years, incapable alike of receiving a conveyance and of taking possession of real property. The trustees could not deal with them.

It is plain from the considerations and authorities before stated and relied upon, that the fee of all the realty was by the will vested in the trustees and the survivor. This being so it must necessarily have remained in the survivor until he became divested thereof in some one of the ordinary ways known to the common law. The statute of uses could not operate upon it, because the freehold as well as the use was in the trustees; it was necessary that the freehold should continue in them in order that they might perform their duties and execute their powers.—(Perry on Trusts, § 300.) When a trust has once devolved upon a trustee, and he has accepted it, he can not get rid of it, nor can he be deprived of it except according to law. The fee could not have been vested in those infant children except by a decree of the chancery court. The surviving trustee could not safely have conveyed to them, because they were infants. A sale or conveyance by this surviving trustee of all the estate to the infants would not have relieved him; he would still have been holden notwithstanding the conveyance.—(Perry on Trusts, § 921.) A mere relinquishment of the trust or of the property, which does not convey the property to some person authorized to receive it, does not discharge the trustee.—(Wauch vs. Wyche, 23 L. J. Ch., 823; Perry on Trusts, §§ 624, 920, 921.)

A trustee cannot, by any act of his own without the consent of his *cestui que trust* being *sui generis*, unless expressly authorized so to do by the instrument by which he is appointed, denude himself of the character of trustee till he has performed the trust.—(Chalmer vs. Bradly, 1 J. & W.,

68 ; Moran vs. Hays, 1 John. Ch., 339.) If the trustee assign the trust estate to another as trustee without the consent of the *cestui que trust* who are *sui generis*, or of the court, it is at his peril, and he will be answerable for the breaches of trust of the assignee whom he has so intrusted. And he will incur the same liability if he delegate the performance of the duties of the trust to a stranger, or even to his co-trustee.—(Shipbrook vs. Hinchinbrook, 16 Vesey, 477 ; 2 Spence Eq., 919; Deifendorf vs. Spraker, 10 N. Y., 246.)

When the power to the trustees is coupled with an interest, the estate shall not determine until the time limited, although the object of their creation fail ; as if the children to be maintained die, or the debts be paid, before the time limited to answer them, determines.—(Powell on Devises, 302 and 303.)

III.

The second assignment of error is based upon the action of the court in requiring the conveyance to the complainants of the estate transferred by Robert Ould to Young. Young employed counsel to remove the cloud on the title which appeared upon the record, through this undischarged deed of trust ; it cost him something, and be it ever so little, he was entitled to credit for his expenses.

IV.

The third subject-matter of complaint, on the part of the appellant, arises out of that part of the decree which renders a personal judgment against him for $10,571, for the rents accruing according to the terms of the expired lease. This lease he positively refused to renew, and he positively refused to rent the premises unless they should be extensively repaired. The building was old and dilapidated and Young absolutely refused to occupy it without the necessary repairs. These facts are not disputed. It is clearly, therefore, unjust to charge him at the rate of

$1,500 per annum for the use of the premises. It is difficult to understand upon what principle of equity these complainants should be allowed rent at the rate of $1,500, as if the old lease was continuing, and at the same time be allowed to retain the amount of the two installments of purchase-money paid by Young to their executor. On the proofs in this case Young cannot be charged with bad faith; and even if he could be so charged successfully, there is no rule of law or equity which would deprive him of credit for what he has actually paid. These payments were made *bona fide* by Young, to the only person authorized by law to receive money for the estate. Bradley was the regularly qualified executor in possession of all the estate of the testator. He gave bond as required by law, for the faithful discharge of his duties as executor: the law of this district requires all executors to qualify by giving bonds to be approved by the Orphan's Court or Register of Wills.—(Act of Md., 1798, ch. 101, § 1; Thompson's Digest, 18.) Nor is there any averment in the bill, or any pretense in the case that Bradley did not properly account for all the money, including this sum received from Young, which came into his hands. It is proper in this connection to invite the attention of the court to the fact, that there is no offer in the bill in this cause, to refund any of this money so paid into the treasury of the estate by the appellant.

The appellant, acting in good faith, and believing himself to be the absolute owner of the property by a good and valid title, expended about $10,000 in making necessary repairs and permanent improvements in and about the property. He ought, in equity, to have the amount of such expenditures set off against the claims for rents, if it shall be adjudged that he took no title by his conveyance from Bradley. This question of repairs—of the dilapidated condition of the "mill"—was the very circumstance which brought about the appellant's present troubles. If the trustee or executor had been in possession of funds be-

longing to the estate sufficient to provide these indispensable repairs, a sale of the property would not probably have been thought of or made.

It is the established doctrine of equity in this country that if a *bona fide* possessor of real property under a defective title, who supposes his title to be good, makes meliorations and improvements upon the estate beneficial to it, that on stating an account for the rents and profits in favor of the true owner, the amount of the expenditures for repairs and improvements shall be credited to the tenant.—(Story's Eq. Juris., §§ 388, 389, 799*a*, 799*b*, 1,237, 1,238, 1,239 ; Green vs. Biddle, 8 Wheat., 77, 78; Bright vs. Boyd, 1 Story, 478; S. C., 2 Story, 365.)

If the court shall be satisfied from the evidence in the record that Bradley and Young proceeded in good faith to consummate this sale, then the sale must be supported. Young stands in the position of a *bona fide* purchaser for a full and adequate consideration; a purchaser of this character will always be protected by the courts when he can be. —(Fletcher vs. Peck, 6 Cr.)

He was only bound to consult the terms of the will to ascertain the powers of Bradley; he knew Bradley had been in possession of the estate ever since the death of the testator, and that he was still in the possession and management thereof. There was absolutely no source from which he could inform himself of any latent defect in the power of Bradley, and the language of the will was certainly broad enough to lull the purchaser into security, and support the claim of power asserted by the surviving trustee.

The matters and things upon which these complainants rely, in their argument in support of the assertion that the power of the surviving trustee had expired or had been exhausted, were circumstances altogether outside of the records of the court, and depend for their proof upon verbal testimony ; and in addition to this, the surviving trustee was left in the exclusive control and management of

the estate, and apparently in the exercise of the same powers he possessed by the terms of the will when he first assumed control of the estate, by the consent and active agency of the complainants and those representing them.

It is submitted that the decree of the Supreme Court of the District of Columbia should be reversed, and the bill should be dismissed.

F. W. JONES,
ENOCH TOTTEN,
Counsel for Appellant.

ANNEX TO APPELLEES' BRIEF.

Fourth Assignment of Error.

* * "Because no credit was given to him for his expenditures for *permanent* improvements, privileges, and betterments upon and about the property."

Young was bound by the covenants in his lease to keep the property in repair. (R., 119.)

The covenant is in the following words:

"Secondly, that he [Mark Young] shall and will, during the said term, at his own proper cost and charge, sufficiently and well, keep in repair the aforesaid mill and premises, when and so often as the same may require repair, damage by accidental fire only excepted."

Notwithstanding this covenant, he says in his answer (R., 15) that at the time of the sale, which was before the expiration of his lease, "the mill had become rickety and dilapidated, and needed an *immense* amount of repairs; * * * that shortly after, or since my purchase thereof I have expended large sums of money upon said property, *putting the same in repair, increasing its water privileges, and improving its machinery*," and gives in detail the items of expenditure, each of which items he gives only approximately, by saying "about" so much, and in this way makes a total of $7.938, and adds to this the further sum of $3,000 for his time, care, and attention "which I devoted to the work myself."

In his testimony before the auditor (R., 124) he gives the items more definitely, as follows:

(1) William Gibson, "stone work upon both the new and old building"	$504 75
(2) Columbus Thomas, "work on the mill," "material and labor"	426 08
(3) Richard A. Edmonston, a bricklayer, "to do work on the mill"	365 00
(4) Mrs. H. P. Collinson, "tin that was used in roofing both properties"	513 15
(5) Albert C. Prather, "as the millwright."	1,500 00
(6) L. T. Cartwright, "a carpenter, to build the new building; this was under contract"	1,500 00
(7) One Offut, "a painter"	50 00
(8) "For labor in excavating tail race"	100 00
(9) W. T. Duvall, "iron work"	100 00
(10) "For laying drain pipe"	40 00
(11) "New elevators and buckets"	238 00
(12) W. H. White, "for painting"	77 50
(13) Robinson Bros., "for iron work"	74 88
Making a total of	$5,489 36

In reference to all of the above items, he says: (R., 124.)

"The work for which these respective amounts were paid by me *was necessary and of a permanent character*."

He then adds to the above items No.

(14) H. H. Dodge, "for 50 inches of water, $5,000.00."

And No.

(15) "I claim as compensation for my personal attention and supervision of the repairs, rebuilding, and remodeling of the property, which occupied off and on some three or four months, $2,000.00.

"I estimate this as profits which I would have made but for the interruption of my business."

(In his answer he says these services amount to $3,000.)

Making altogether a grand total of $12,489.26.

Although he had estimated the same expenditures in his answer at $10,938.00.

In the first place, it is to be observed, in reference to all the above items, that by the order of reference to the auditor, he was directed to inquire (R., 119)

"What permanent and lasting improvements have been made by said Mark Young upon said premises since said sale and conveyance, and the cost thereof, and how far the value of the property has been augmented thereby."

And also,

"What repairs said Mark Young has made since said sale and conveyance, and the cost thereof, and how far said repairs were such as said Young, as tenant of the property, was bound to make under the covenants to repair contained in the lease, read at the hearing, or at common law, independently of said contract, or were such as said Young made for his own convenience and in the prosecution of his business."

That the auditor reported adversely to the defendant Young, (R., 124,) and that he filed no exception thereto, (R., 130,) although he had ample opportunity to do so, the report having been filed October 20, 1876, (R., 121,) and the decree not having been rendered till June 19, 1877, (R., 130,) a period of eight months—eight times the amount of time allowed by the court in which to file exceptions.

Next as to the fairness of the items themselves.

(1) Wm. Gibson, "stone work upon both the new and old building." $504 75

In support of this charge, Young does not show or bring Gibson to show that this work was "a permanent or lasting improvement," or "that it was not such repair as Young, as tenant of the property, was bound to make under the covenants to repair contained in the lease." But simply files before the auditor (R., 121) a receipted account of

Gibson's for "78 perch of stone at $6.25 per perch."	$487 50
Mason, 1 day cutting joist holes	4 50
My time and labor digging and fixing posts inside of mill, one day each	6 50
Cement, 2½ barrels at $2.50	6 25
	$504 75

(2) Columbus Thomas, "work on the mill," "material and labor" ---------- $426 08

The first part of the above observation on (1) applies equally as well to (2). The only proof in support of it is the following account:

"GEORGETOWN, D. C., Oct. 2, 1871.

Mr. M. YOUNG to C. THOMAS, *Dr.*

To *materials and repairing* his mill ---------- $426 08

Received payment. C. THOMAS."

(3) Richard A. Edmonston, "a bricklayer, to do work on the mill."

In reference to this charge, Young, in his testimony before the auditor, says: (R., 124.)

"The bill for this amount has been mislaid, but I will try to file a duplicate thereof."

But "the duplicate thereof" he never did file, or make any explanation whatever of the character of the work.

(4) Mrs. H. P. Collinson, "tin that was used in roofing both properties" ---------- $513 15

The items of this charge are contained in Mrs. Collinson's account. (R., 123.)

No explanation is given of the meaning of "both properties," and, at most, the expenditure was for "tin used in roofing," which can hardly be said to be "a permanent and lasting improvement," for it was simply a repair which "Young, as tenant of the property, was bound to make, under the covenant to repair contained in his lease."

(5) Albert C. Prather, "as the millwright"---- $1,500 00

No items are given of this charge. But Prather is brought as a witness by the defense, and says, in explanation of the charge: (R., 97.)

"That he has done a great deal of work on the mill; that he has done all Young's millwright ever since he has been at the mill; that Mr. Young asked me about a year ago, as nearly as I can recollect, to make a statement and look over my books and see what amount of work I done. I did so; and I went to Mr. Wheatley's and got the amount of lumber I used, and, as nearly as I can recollect, something upwards of $1,500, work and material we used, came to.

* * * * * * * * *

"The bill I made out for Mr. Young [of these repairs] is correct."

[No such bill is produced.]

"Q. Have you not charged Mr. Young for all the work you did for him?

"A. Yes, sir; and given him a bill and receipt for all the work done for him, and received all the money." (R., 99.)

The receipted bill is not produced, and the witness says that the "time books from which the account was made are lost." (R., 99.)

"Q. * * * Are you positive that you put in this bill no work done by you prior to his purchase of the mill?

"A. I am not positive about that.

"Q. Mills involve a great deal of mill-wrighting in the nature of things, do they not? (R., 102.)

"A. Yes, sir; mills are very expensive things to keep in repair.

"Q. This bill of $1,500 for two years was not much more than the ordinary bill for wear and tear of mill property, was it?

"A. No, sir; I have done more than that much work for Mr. Ray in the last two months."

(6) L. T. Cartwright, a "carpenter, to build the new building;" this was under a contract. The amount of his claim was.. $1,500 00

The contract is not produced; but Cartwright, for the defense, testifies (R., 95) that in 1868, three years before the sale, he built for Young a corn crib on the west side of the mill; and that the cost of this, "the work and everything," was between $700 and $800, and not $1,500, as stated by Young in his answer, (R., 15,) and in his deposition before the auditor. (R., 124.)

(7) One Offut, "a painter"..... ..... $50 00

In his answer he says, "Offut, painting roof, about" $50. This item is nowhere mentioned in any other part of the record.

(8) "For labor in excavating tail race"... ..... $100 00

In his answer he says, "laborers for excavating and enlarging tail race."

(9) W. T. Duvall, "iron work"..... $100 00

The account is not produced, nor does Duvall testify, or is any explanation given as to the character of the work or when it was done.

(10) "For laying drain pipe"..... $40 00

When or where not stated, or for what purpose the pipe was used.

(11) "New elevators and buckets"..... $238 00

No account is filed; nothing given to show when or by whom the work was done.

They are most probably the same elevators (R., 97, 101) and buckets (R., 98, 100) testified to by the witness Prather and embraced in (5). He further testifies in reference to these repairs as follows (R., 102):

"Q. New hoops and elevators, and screens and water wheels, and all that sort of thing, are inseparably connected with the use of the mill property?

"A. Yes, sir; cannot be a mill without that."

(12) W. H. White, "for painting"..... $77 50

The receipted account (R., 123) shows the charge is for "painting office," "painting on contract," and "glazing."

(13) Robinson Bros., "for iron work".. ..... $74 88

This item is not mentioned in Young's answer at all.

The itemized account (R., 122) shows the expenditure was for ordinary repairs, such as Young was bound to make as tenant.

(14) H. H. Dodge, 50 inches of water..... ..... $5000 00

The conveyance from the canal company to Dodge (R., 125) and the assignment from Dodge to Young (R., 128) show that the water charged for in this item is not appendant to the premises in question, but can be used by said Young elsewhere than in this mill.

(15) This charge can hardly be seriously insisted upon.

W. D. DAVIDGE,
REGINALD FENDALL,
Solicitors for Appellees.

SUPREME COURT
APR 12 1880
D. W. MIDDLETON

reme Court of the United States

OCTOBER TERM, 1879.

No. 257.

MARK YOUNG, APPELLANT,

vs.

OWELL M. BRADLEY ET AL.

... from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEES.

W. D. DAVIDGE,
REGINALD FENDALL,
Solicitors of Appellees.

nas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM. 1879.—No. 257.

MARK YOUNG, APPELLANT,

vs.

POWELL M. BRADLEY ET AL.

BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

William A. Bradley, late of the District of Columbia, made his last will and testament on the 7th of August, 1866, and died about a year thereafter. His family consisted of his wife, a married son, William A. Bradley, Jr., and his three children, and two married daughters, Sidney T. Edelin and Jeanette H. Linton. The testator, by his will, devised all his estate, real, personal, and mixed, to his son, William A. Bradley, Jr., and his cousin, A. Thomas Bradley, whom he appointed trustees and executors, in trust:

To *set apart* the house in which the testator resided, together with all the household furniture and effects, for the exclusive use of his widow during her natural life, and to pay her during her natural life, annually or quarterly, as she preferred, one-third of the net income derived from the estate of every sort.

Next: Immediately after the testator's death *to divide* his estate, of whatever sort, into four parts or shares, equal in value as near as might be, and *to allot* one of those shares

to the son and another to his children born and to be born of such son, and the third to the daughter Jeanette H. Linton, and the fourth to the other daughter, Sidney T. Edelin.

Certain New York property, called the "Corning property," was directed to be included in the last part—that of Sidney T. Edelin.

Next: That upon the death of either or both of the daughters without issue, and whether before or after the death of the testator, the part or parts allotted as above should go to the children born and to be born of the son, except the "Corning property," which, upon the death of Sidney T. Edelin without issue, in the lifetime of her husband, was to be conveyed by the trustees to the husband.

The house set aside for the widow, valued at $10,000, was to be charged to the two shares of the daughters, and at the death of the widow was to be added or restored to such shares. The household furniture and effects were, upon the death of the widow, to be divided as the other property.

The testator directed as follows in respect of the parts or shares of his two daughters: "And in the absence of issue of either or both of them, then to follow the dispositions hereinbefore provided in that event; but whether with or without issue of my said daughter Sidney T., nothing shall be herein understood to prejudice the conditional estate hereinbefore provided for her said husband."

The will further provided that upon the division into four parts, the son or his heirs should receive his share or portion *immediately and free from any and all trusts whatsoever contained in the will*, except his share of the household furniture and effects, the division of which was postponed until the death of the widow.

The will then provides as follows:

"Item second. I give and bestow upon my said trustees and the survivor of them the largest powers and discretion

in taking charge of and managing my estate, and authorize them and the survivor to have, hold, direct, and control the aforesaid trust property according to their or the survivor's best judgment, and to sell and dispose of the same, or any parts thereof, from time to time, subject only to the aforesaid trusts, and as freely as I myself could do if living."

No division or allotment was ever made.

The widow died in 1868.

The son, William A. Bradley, died in March, 1869, leaving a widow and three children, the complainants.

By his last will and testament the son devised all his estate to his widow for life, but upon condition that if she should marry again such devise should cease, and she should take such interest as she would have taken had he died intestate; and subject to such devise he devised all his estate of whatsoever kind to his children living at his death or intermarriage of his widow. (Record, p. 8.)

The widow of the son intermarried with the defendant, Christopher C. Wolcott.

Jeanette H. Linton, the daughter, died without issue January, 1871.

Sidney T. Edelin died without issue May, 1870.

The "Corning property" was conveyed in fee by the testator in his lifetime to Alfred Edelin, the husband of Sidney T. Edelin.

Thus, of the beneficiaries in the will, there remained in January, 1871, only the children of the son, William A. Bradley, Jr., upon whom devolved all the estate of the testator.

The trust for the benefit of the widow had become extinguished by her death.

The part or share to be allotted to the son was for his *immediate* enjoyment, "free from any and all trusts whatever contained in the will."

There was no trust declared in respect of the part or

share devised to the children of the son. Assuming that the income from this share was to be collected by the trustees, who were to pay to the widow one-third of the net income of the estate, the power of the trustees so to collect ceased absolutely upon her death.

The daughters had both died without issue, and the trust for them and their children had thereby become extinguished.

The parts or shares directed to be allotted to the daughters then passed by the express terms of the will to the children of the son.

The trust for division or allotment, as provided by the will, had become extinct. The four parts or shares had by death been consolidated.

It is thus apparent that all the purposes for which the trust was created and powers given to the trustees had ceased to exist.

No reason can be conceived for the continuance of the trust after all interests had vested absolutely in the children of the son.

The testator died seized of real estate in this District of large value, and among it of a grist-mill situate in Georgetown, and fronting on the south bank of the Chesapeake and Ohio Canal thirty-five feet, and running back to Water street and having a front on said street of about fifty-two feet, which property was at the death of the testator leased to Mark Young at an annual rental of $2,000, payable quarter-yearly in advance. This lease expired in July, 1868. After the expiration of the lease a new lease was made to Mark Young for the term of three years from the 11th of July, 1868, at an annual rent of $1,500, payable quarter-yearly, and with the privilege of renewal for two years more.

The testator also died seized of certain real estate adjoining the above mill property on the west, and fronting on

the south bank of said canal seventy-five feet, and running back of the same width to said Water street; and also of certain wharf property situate on the south side of Water street and between said street and the channel of the Potomac River, having a river front of from 130 to 140 feet, and a front on Water street of from 125 to 130 feet, all which property was at the death of the testator under lease to the Cumberland Coal and Iron Company for the term of five years from the 1st of March, 1864, and at an annual rent of $1,200. The said lease expired on the 1st day of March, 1869, and was thereupon renewed for the further term of five years, and afterwards assigned to the Consolidation Coal Company.

The two last-mentioned pieces of property were used for the transhipment of coal from canal boats to the wharf south of Water street and vessels in the Potomac River, by means of railways supported by trestle-work, and extending from the canal bank over the property lying west of the mill property, and then over Water street to the wharf property, or vessels in the river.

The adaptation of the wharf property to said business, by reason of its connection with the canal by means of the property adjoining the mill property on the west, constituted its main value.

On the 10th of June, 1871, A. Thomas Bradley, surviving trustee of the testator, William A. Bradley, sold and conveyed to Mark Young as well the mill property as the property adjoining the same on the west, and also the water lease from the Chesapeake and Ohio Canal Company for 150 inches of water attached to said mill, and also the privilege of using said wharf property for the purpose of keeping in repair the tail-race from the mill, for $13,900, payable one-third in cash and the balance in one and two years.

To secure these deferred payments a deed of trust was given by the purchaser to F. W. Jones, as trustee, on the

day of the purchase, and on the 1st of July, 1871, a further incumbrance was placed upon the property in favor of W. S. Cox, trustee, to secure a debt due the defendant Henry H. Dodge, of $1,250.

On the 16th of June, 1871, Mark Young obtained from Robert Ould the outstanding legal title under two deeds of trust which had been given by William A. Bradley in his lifetime, but had long been satisfied. The deed of release from Ould will be found on page 17 of the Record. It was evidently obtained to prop up a purchase known or supposed to be invalid or questionable.

The consideration of the sale was grossly inadequate, the value of the property exceeding $25,000.

The effect of the sale was, moreover, almost wholly to destroy the value of the wharf property by cutting off its connection with the canal. Without such connection the wharf property was worth less than $5,000. With such connection its value exceeded $30,000.

The surviving trustee, A. Thomas Bradley, in making the sale, was imposed upon by Mark Young, and, being ignorant of the premises, supposed he was selling the mill property alone, and not that property in connection with the valuable property west of it.

The bill was filed in behalf of the children of the son, William A. Bradley, Jr., aged 13, 9, and 6 years, to set aside the sale upon the grounds of want of power in the surviving trustee to make the sale, gross inadequacy of price, and fraud practiced upon the surviving trustee by the purchaser.

The cause was certified to the court in General Term for hearing in the first instance. (Record, p. 118.) At the hearing the court was of the opinion that the sale and conveyance by Bradley as surviving trustee to Mark Young was null and void, by reason of the want of power, but desiring such facts as would enable it to determine what, if any, terms ought to be imposed as the condition of grant-

ing the relief prayed for, on the 14th of June, 1875, referred the cause to the auditor, with instructions to inquire and report as follows:

"1. What permanent and lasting improvements have been made by said Mark Young upon said premises since said sale and conveyance, and the cost thereof, and how far the value of the property has been augmented thereby.

"2. What repairs said Mark Young has made since said sale and conveyance, and the cost thereof, and how far said repairs were such as said Young, as tenant of the property, was bound to make under the covenants to repair contained in the lease read at the hearing, or at common law, independently of said covenant, or were such as said Young made for his own convenience and in the prosecution of his business.

"3. Whether the additional water power acquired by said Mark Young is appendant to the premises or any part, or is conveyed in gross.

"4. How far any augmentation of value by improvements is dependent upon such additional water power.

"5. The effect of the removal of said additional water power upon the value of the property.

"6. How much, if any, of the money paid by said Mark Young to A. Thomas Bradley went to the benefit and advantage of the complainants.

"And that in making said inquiries the auditor may use evidence already in the cause, or take such further evidence as may be offered by the parties."

The report of the auditor will be found at page 119 of the Record. He reported adversely to the purchaser on all the subjects of inquiry.

In respect of the inquiry as to "how much, if any, of the money paid by said Mark Young to A. Thomas Bradley went to the benefit and advantage of the complainants," he reported that the evidence in the case did not show that any part of the money paid by said Mark Young to A. Thomas Bradley went to the benefit or advantage of the complainants. (Record, p. 121.) No exceptions were filed to the report.

The final decree in the cause was rendered on the 19th of June, 1877. It decreed that the deed from Bradley to Young, and the deeds of trust from the latter to T. W. Jones and W. S. Cox, were severally null and void, and ordered the reconveyance of the property to the complainants as tenants in common in fee-simple. It further decreed that there was due to the complainants by Mark Young on the 15th of June, 1877, for the rent of the portion of the property leased to him, and interest on the quarterly payments in arrears, the sum of $10,571.60; and that the complainants recover the said amount and have execution therefor; and that they further recover for any period during which Mark Young should hold possession of the premises after the date of the decree, at the rate of $1,500 per annum, with interest on any rent in arrears, and have execution from time to time therefor.

On the question of value the complainants produced several witnesses, among them

HENRY C. WINSHIP, a shipper of coal, who, as the agent of the Consolidation Coal Company of Maryland, occupied a portion of the property in question at the time of the sale to Young, and several years previously, and whose testimony shows him to be well acquainted with the value of property of the character of that in question.

He very clearly describes (Record, p. 33) the property sold, and the relation it bears to the remaining portion, and says: (Record, p. 34.)

"The value of the Bradley lot between Water street and the Potomac river *entirely* depends upon the possession of the water front of the canal. Without the canal front, the property is of no value for the shipping of coal under the present system; but off from the canal, I would not give $2,500 for the property south of Water street. * * *

"Taking the property south of Water street in connection with the property leased to the Consolidation Coal Compa-

ny, and including the 'mill property' of Mark Young, the whole is worth *not less than* $30,000.

"Without the Mark Young 'mill property,' the property leased to the Consolidation Coal Company, north and south of Water street, is worth $16,000. It could be sold for that without any trouble; I know it could be sold for that."

Thomas J. Mehaffy, also a coal agent, and well acquainted with the property in question, says that the property occupied by the Consolidation Coal Company, and situated on Water street, is worth $30,000. (Record, p. 35.)

"The main element of its value is its facility for shipment of coal. Neither piece of property is of much value without the other, for the purpose of shipping coal."

He heard of this sale about a month after it took place, and (Record, p. 36) "told Mr. Bradley the property was worth from $40,000 to $50,000—I mean the whole property, the mill and all together. But when the property was separated, one portion was valueless without the other, so far as the shipment of coal was concerned."

William H. Tenney says: (Record, p. 39.) "The valuation I put upon the property was $30,000. The property I supposed to have been bought by him (Young) was all the property lying east of my mill and running to Fayette street, and running from Water street front to the canal property, with the right of the canal front, together with the right of water."

This is the correct description of the property conveyed by Bradley to Young.

This witness also says that shortly after the sale he offered Young $4,000 for the warehouse alone, (Record, p. 40,) and Young "declined the offer, and named $5,000, and subsequently refused to take $5,000." (Record, p. 40.) "The wharf property and the canal property ought to be sold together. Their value is mutually dependent on each other." (Record, p. 41.)

James L. Davis, a real-estate agent, says that shortly after the sale he approached Young to buy a portion or the whole of the property which he obtained from Bradley, and Young "gave me his figures as follows: $20,000 for a portion of the property without the mill; $30,000 with the mill; $35,000 or $40,000 for the whole property, with the water right."

John Tenney confirms (Record, p. 25) the foregoing testimony of Young's own estimate of the values, and also says that the property sold was worth $30,000, (Record, p. 51,) and that for the purpose of the coal business the value of the property north and south of Water street depended altogether upon being connected together. (Record, p. 52.)

D. L. Shoemaker, for the defense, says (Record, p. 93) the real value of the property south of Water street is its adaptation to use for coal purposes, and "if you deprive it of the right of way from the river to the canal, of course you injure the other part of it. For coal purposes, *the property south would be entirely killed.*" And that with but a single exception all the wharves in that locality are used for no other purpose than the shipment of coal. (Record, p. 93.)

In support of the averment in the bill that the trustee Bradley, "either through the fraudulent practices of said Young, or through mistake and ignorance of the value and dimensions of the property, believed he was selling and conveying *only the mill property*, whereof said Young was tenant," the defendant Bradley in his answer says: (Record, p. 21.)

"He admits that in June, 1871, he sold to the defendant Mark Young that part of the aforesaid real estate known to this defendant as the '*mill property*,' *at that time rented to and occupied by said Mark Young*, upon the terms set out by the plaintiffs in their bill, and executed therefor the

deed, a copy of which is filed in this cause, marked 'P. M. B. Exhibit No. 3.'

"That prior to said sale said Young had been tenant of said '*mill property*' for a long time, always prompt in the payment of his rent, and had given notice to this defendant that he would vacate the same unless certain necessary repairs were made thereon, or unless he could purchase the same.

"That * * * it was deemed by him advisable to offer to sell said '*mill property*' to said Mark Young, which said defendant communicated to said F. W. Jones, as attorney for said Young, and that he would entertain an offer for the same.

"That said defendant Jones, shortly thereafter, presented, on behalf of said Young, a written proposition to sell, for this defendant to sign, which this defendant signed in duplicate, and said Young accepted said offer, and the terms thereof are those stated in said deed. *This defendant relied for the statement of the metes and bounds of said property upon those stated in said proposition, and believed they were those which contained the property at that time occupied by said Young, and known to this defendant as the 'mill property.'*

"The origin of said sale was that said Young threatened to vacate the property he rented unless he could have heavy repairs put thereon, *or could buy the same;* and this defendant had a right to believe, and did believe, that the said 'mill property' was that which was in negotiation and no other, and he avers and charges that if any other or more land was conveyed, it was through a mistake made by said Jones (defendant), and grew out of the trusts and confidence with which this defendant accepted the description of said land which was furnished him."

Mr. Bradley was examined as a witness in the cause, and gives more in detail (Record, pp. 30, 31, and 32) the circumstances of the fraud practiced on him by Young.

Henry Winship says: (Record, p. 34.)

"I heard of the sale by Mr. A. Thomas Bradley to Mr. Mark Young some time after the sale. Young notified me to pay but one-half of the rent to Bradley. Some time after, I met Mr. Bradley and told him what Young had

said. He seemed surprised, and said that Mark Young had no right to any of the rent; that his sale did not interfere with any of the coal property, or words to that effect."

The defendant Young says: (Record, p. 13.)

I had notified him [Bradley] that I should leave the place [i. e., the 'mill property] when my time was out (July 11, 1871); that I would not pay the rent, which was high, and the property was in bad repair and excessively dilapidated. He then proposed to me to buy *it* from him."

"He made a proposal to me in writing * * * giving the dimensions of the property he proposed to sell, * * * which proposal I accepted."

Young's attorney, F. W. Jones, testifies as follows (Record, p. 60) in reference to the "proposal in writing":

"Q. In whose handwriting are the two papers of which Exhibit A is a duplicate?
A. Thomas H. Callan.
Q. Is he not in your office?
A. He is not. He and I occupy the adjoining rooms."

The defendant Young, in his cross-examination, shows clearly (Record, p. 69) that the "proposal in writing" (Exhibit "A") emanated from him and Jones.

D. L. Shoemaker, a witness for the defendant, says (Record, p. 91) that a few days after the sale he had a conversation with Mr. Bradley, and Mr. Bradley "told me he had sold Mr. Young's mill, between the canal and Water street. I understood afterwards it included the warehouse adjoining or close to it. There is a space between."

"Q. In the conversation between you and A. Thomas Bradley there was nothing said by the latter in reference to the warehouse or any other property than Young's mill?
A. No, sir; I am satisfied there was not."

Argument.

I.

Jurisdiction.

The record does not show that an appeal was prayed and allowed. In Railroad Company *v.* Bradley, 7 Wall., 575, this court held that the allowance of the appeal might be inferred from the approval of the appeal bond. The court is now called upon to go a step further, and hold that both the prayer for an appeal and its allowance may be inferred from the approval of an appeal bond.

A *supersedeas* bond was approved July 20, 1877, by an associate justice of the court below. The same justice, on the 25th of July, 1877, ordered that the penalty of the bond be increased, and thereupon a new bond was given and approved on the 1st of August, 1877. (Record, pp. 131–133.)

The approval of these bonds is the only evidence furnished by the record that an appeal was prayed and allowed.

Certainly, if there is any appeal here, it can only be that of the obligor in the bond.

Again, no citation was issued. To dispense with the necessity of a citation, the appeal must be allowed in open court during the term at which it was rendered. The only allowance here is the approval of the bonds, but there is nothing to show that such approval was the act of the court during the term and when actually in session. The approval might as well have been the act of the justice alone out of court. Hence a citation was necessary. Van Zandt *v.* Gaslight Co., 99 U. S., 213, is directly in point.

II.

The Errors Assigned.

The first error alleged is, that the court erred in holding that A. Thomas Bradley, the surviving trustee, had not the power to sell and convey the property to Mark Young.

The contract of sale is dated June 2, 1871, (Record, p. 16,) and the conveyance is dated June 10, 1871. (Record, p. 9.)

It is maintained:

1. That the power to sell given by the will did not extend beyond the trust property held by the trustees for the benefit of the married daughters and their children.

2. That even if it did, such power was to enable certain purposes to be accomplished, and ceased when such purposes had been accomplished or had become impracticable.

As to the first:

The will is skillfully drawn. It is divided into three items. The first, after making provision for the payment of debts *by the executors*, devises the residue of the estate to trustees, and then proceeds specifically to point out the objects which the testator desired should be fulfilled. None of these objects involved the necessity or propriety of a power of sale in the trustees, except the settlement of the shares of the married daughters for the benefit of them and their children. With that exception, the objects to be attained involved simply the ordinary power of taking charge of and managing the estate.

Thus, the setting apart the dwelling-house, with the household furniture, for the wife for life; the payment to her of one-third of the net income of the estate for life; the division of the estate into four parts, according to value; the allotment of the parts as prescribed; the conveyance of the "Corning property" to Edelin, and the adding, upon the death of the wife, the dwelling-house to the shares of the

married daughters, which had been charged with its value, are all matters which could be carried out as well without as with the power of sale. They are all matters of ordinary management or administration. Most of them were to be done immediately, and the last was to be performed upon the death of the wife.

When the testator desired that a power of sale should be associated with the general power to take charge of and manage the estate, he was careful to say so. Thus, in repect of the household furniture he gives express authority to sell it and divide the proceeds.

When, however, we come to the shares of the married daughters settled in trust upon them and their children, the propriety and, indeed, necessity of a power of sale is apparent. This trust was to last until the issue of the married daughters attained twenty years of age. It involved the holding and direction and control of the property settled in trust. Plenary provision was absolutely necessary for the protection of the interests of the married daughters and their children.

We come now to item second. (Record, p. 7.) After, in the preceding item, enumerating the objects to be attained, the testator proceeds to provide the powers. He first gives the largest powers and discretion *to take charge of and manage his estate.* He says: "I give and bestow upon my said trustees and the survivor of them the largest powers and discretion in taking charge of and managing my estate." This grant of power obviously had relation to the matters of management and administration spoken of above. The testator uses the word "estate" because these were matters which had relation in some manner to the whole estate. For instance, the whole was to be divided and allotted, &c.

The will then goes on "to authorize them" (the trustees) "and the survivor *to have, hold, direct, and control the aforesaid trust property* according to their or the survivor's best

judgment, and to *sell and dispose* of the *same* or *any parts thereof from time to time, subject only to the aforesaid trusts*, and as freely as I myself could do if living."

The difference between the power here granted and that granted in the preceding lines is manifest. The testator recognized that, in addition to the "estate" which required general powers of management and administration, there was certain property mentioned before and which he styled "the aforesaid trust property," which required to be *held, directed, and controlled*, and which further required that there should be vested in the trustees the power to sell and dispose of the whole of such trust property or any part thereof from time to time, but subject to the aforesaid trusts. Now, what property is referred to? Evidently the property which the will directed should be held in trust—that is, the parts or shares of the married daughters.

In a vague and general sense all the property might be called trust property, as the legal title to all was vested in the trustees; but it is too plain for argument that the above provision was not intended to relate to all the estate. He could not have meant that the part or share of the son should be *held*, *directed*, and *controlled* by the trustees with power of sale as to the whole or part from time to time, and "subject only to the aforesaid trusts," when he had just before expressly declared that the son should receive his share *immediately*, and that it should be "*free from any and all trusts whatever.*" He could not have meant that the "Corning property" should be held by the trustees liable to sale, when they had been expressly required to convey it in fee-simple. Neither could he have meant that the share allotted to the children of the son should still be held and controlled by the trustees, subject to sale, and the proceeds subject to "the aforesaid trusts," when the will nowhere evinces any intention to subject that share to any trust beyond the power of the trustees to collect the income of

such share, which power, if it existed, determined with the life of the wife of the testator.

It is plain, then, that the testator, by "the aforesaid trust property," did not mean the estate generally, but certain property which was not to be given to the beneficiaries, but retained by the trustees, and in respect of which trusts had been declared, which trusts were to continue in respect of the proceeds of any sale. Such property could only be that settled in trust upon the daughters and their children, and the large control and power given to the trustees over it was evidently the result of the fixed determination of the testator to protect it against the daughters' husbands and their creditors.

It is thus only necessary to construe the provisions of the second item of the will *reddendo singula singulis*, to remove all doubt as to the meaning of the testator, and to avoid the contradictions and confusion which must otherwise result.

As to the second:

Even assuming, *argumenti gratiâ*, that the power of sale in item second had relation to the whole estate and not to the property settled in trust upon the daughters and their children, the want of power in the surviving trustee to make the sale when made is equally clear. The estate and powers given to the trustees were given to effect the objects specifically mentioned in the first item of the will. After those objects had been accomplished, or had become impracticable, the estate and powers ceased. This must be conceded, unless it be contended that the estate and powers were to exist in the trustees and their heirs in perpetuity, and wholly irrespective of the purposes for which they were created.

Much stress is laid by the opposite brief upon the fact that the will gives the legal title to the trustees, their heirs, executors and administrators. The simple answer to this

is, that the estate of a trustee is in no manner dependent upon the words of limitation used, but upon the purposes to be accomplished. The quantity of the trust estate is always controlled by the objects for which it is given. If such quantity, according to the technical terms used, is too small to carry out the objects, it will be extended; if too large, it will be restricted.

This subject is elaborately discussed by this court in the case of Doe, lessee of Poor, *v.* Considine, 6 Wall., 458.

Judge Swayne, delivering the opinion of the court, says:

"When a trust has been created, it is to be held large enough to enable the trustee to accomplish the objects of its creation. If a fee-simple estate be necessary, it will be held to exist though no words of limitation be found in the instrument by which the title was passed to the trustee and the estate created. On the other hand, it is equally well settled that, where no intention to the contrary appears, the language used in creating the estate will be limited and restrained to the purposes of its creation; and when they are satisfied, the estate of the trustee ceases to exist, and his title becomes extinct. The extent and duration of the estate are measured by the objects of its creation."

Jarman says:

"Trustees take exactly the estate which the purposes of the trust require, and the question is not whether the testator has used words of limitation or expressions adequate to carry an estate of inheritance, but whether the exigencies of the trust demand the fee-simple, or can be satisfied by any, and what, less estate."

Chancellor Kent says:

"The general rule is that a trust estate is not to continue beyond the period required by the purposes of the trust; and notwithstanding the devise to the trustees *and their heirs*, they take only a chattel interest where the trust does not require an estate of higher quality."

Now, what object of the will could possibly be promoted

by the sale in question? What object that could possibly be fulfilled remained unfulfilled? The wife was dead, and there was an end to the execution of all provisions of the will for her benefit. The daughters were likewise dead, and with their death ended the provisions for their benefit. Their shares had devolved upon the son's children—the complainants. The son was also dead, and his share had likewise devolved upon his children—the complainants. There was no need of valuation and division, for there were no parties to whom the allotment required by the will could be made.

The hand of death had consolidated all interests in the children of the son, and all provisions of the will not executed had become incapable of execution. In point of fact there is no pretense that the sale was made to promote any object of the will.

Although the decree alleges the want of power as the ground for setting aside the sale, it must not be inferred that had the power existed the sale would have been allowed to stand.

The inadequacy of price was gross, and the purchaser deceived the trustee as to the property sold.

See the evidence above referred to.

The appellant well knew that Bradley occupied a fiduciary relation and professed to represent the interests of infants of tender age.

As to the second error assigned:

The claim to an allowance for obtaining the Ould release is now made for the first time.

That deed, which merely released two satisfied deeds of trust, enured to the owner of the property. The appellant obtained it under color of such ownership, and had no more right to retain the title released, if any, than to retain the property conveyed by Bradley.

As to the third error assigned:

When the appellant bought he was lessee under a sealed indenture of lease. After his pretended purchase he refused to pay the rent covenanted in the lease to be paid, and stood upon such purchase. The court merely charged him as tenant according to the terms of his own covenant.

As to the fourth error assigned:

The foregoing answer to the third error assigned meets the first part of this assignment. The so-called "excessive rate of $1,500" was just what the appellant had in his lease covenanted to pay. As to the complaint that no credit was allowed for "expenditures for permanent improvements, privileges, and betterments upon and about the property," attention is called to the reference to the auditor. (Record, p. 119.) The auditor disallowed the claim of the appellant, and the latter failed to except to the report, as stated in the final decree and as appears at page 129 of the Record. The appellant had his day in court.

As to the fifth error assigned:

The subject of this assignment was also referred by the court to the auditor, who reported that none of the money paid by the appellant to A. Thomas Bradley went to the benefit and advantage of the complainants. (Record, p. 121.) No exception was filed to the report.

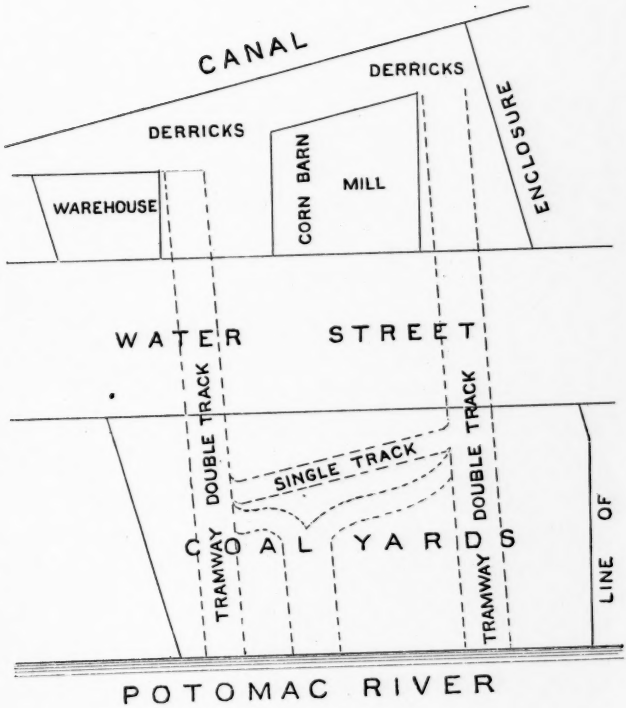
The money paid by the appellant to Bradley was paid to him, not as executor, but as surviving trustee. As executor he had nothing to do with the real estate. He signed the deed as surviving trustee. (Record, p. 10.) The complainants repudiated the sale as without power, fraudulent, and void.

The court regarded the matter as simply one between Bradley and the appellant. The former had sold property which he had no right to sell, and the latter had paid money

in his own wrong. The matter was one exclusively between them.

In conclusion, it is submitted that this appeal is wholly devoid of any merit, in law or morals, and that the decree below ought to be affirmed.

W. D. DAVIDGE,
REGINALD FENDALL,
Solicitors for Appellees.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DOUBLE TRACK TRAMWAY
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